United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-5020

B

P/S

United States Court of Appeals

For the Second Circuit

Docket No. 76-5020

IN THE MATTER

OF

F. O. BAROFF COMPANY, INC.,

Debtor.

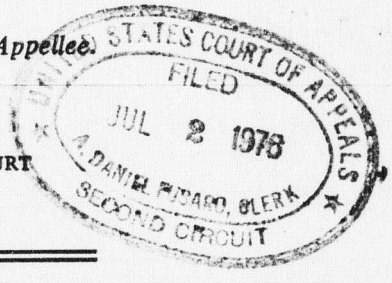
AMERICAN BANK & TRUST COMPANY,

Plaintiff-Appellant,

against

EDWARD S. DAVIS, Trustee,

Defendant-Appellee.



ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

REAVIS & MCGRATH
Attorneys for Plaintiff-Appellant
American Bank & Trust Company
1 Chase Manhattan Plaza
New York, New York 10005

HUGHES, HUBBARD & REED
Attorneys for Defendant-Respondent
Edward S. Davis, Trustee
One Wall Street
New York, New York 10005

PAGINATION AS IN ORIGINAL COPY

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Docket Entries

CIVIL DOCKET

UNITED STATES DISTRICT COURT

72 Civ.

Jury demand date:

D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
	For plaintiff:
SECURITIES AND EXCHANGE COMMISSION	Regional Administrator Securities and Exchange Commissio 26 Federal Plaza New York, N.Y. 10007
vs.	
F. C. BAROFF COMPANY INC.	
	For defendant:

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	
J.S. 5 mailed x	Clerk		1/21/73	Cash	5	—
			10/3/73	Treas		5 —
			4/23/76	Refund	5	—
J.S. 6 mailed 6-3-19-76	Marshal		4/27/76	Treas		5
Basis of Action:	Docket fee					
	Witness fees					
Action arose at:	Depositions					

A

DATE	PROCEEDINGS	Date O-Judgmen
n.6-72	Filed complaint and issued summons.	
n.6-72	Filed application of Securities Investor Protection Corp.	
n.6-72	Filed request & order appointing Sheldon G. Kanoff and Frank A.DiDio to serve summons & complaint--So Ordered-Clerk.	
n.6-72	Filed order and Judgment-appointing Edw.S.Davis, Hughes Hubbard & Reed, 1 Wall St. N.Y.C. 10005 as Trustee for the liquidation of the business of F.O.Baroff Co --Pierce, J. Judgment entered 1-6-72 (mailed notice. Trustee to file fidelity bond in the amount of $5,000.	
n.6-72	Filed Final Judgment of Permanent Injunction and Order freezing the assests of deft. Ordered that deft. its officers etc. are permanently enjoined as indicated Pierce, J. (Mailed notices)	
n.7-72	Filed Bond in Liquidation ($5,000) Nat'l Surety Corp.	
n.7-72	Filed order-the trustee publish as indicated: Ordered that all banks open and trun over the Trustee all safe-deposit and other rental boxes and the contents thereof maintaned in the name of the Debtor. --Wyatt, J.	
n.19-72	Before Pierce, J. Hearing held. Dec. Res.	
n.21-72	Filed order-Ordered that hearing is fixed on 3-3-72 in room 1106.Trustee to give notice--Pierce, J. mailed notice.	
n.21-72	Filed order extending stay 30 days from the date hereof--Pierce,J.	
n.21-72	Filed order than any & all matters in this proceedings are referred to Hon. Edward Ryan of Bankruptcy. Mailed notice.	
ct.24-72	Filed claimants position.	
ov.2-72	Filed Order to Show Cause Ret. Rm.236 at 10A.M. 10-20-72	
ov.2-72	Filed affdvt of service of Order to Show Cause.	
ov.2-72	Filed Special Mastgr report by Edward Ryan.	
ov.2-72	Filed order adopting and confirming Report of Special Master-Ordered the Trustee is authorized to reject the ~~xxx~~ three leases of the Debtor referred to in the above report of Special Master--Pierce, J. mailed notices.	
ov.14-72	Filed affdvt of R.H.Elwood in opposition to the trustee's position with respect to the claim filed by James Marks.	
ov.27-72	Filed affdvt of service of Notice of Settlement of Order.	
b. 27-73	Filed notice to take deposition by trustee upon Abraham Brazel.	
ar.2-73	Filed notice of deposition of trustee upon P.Albert.	
ar.2-73	Filed notice of deposition of trustee upon C.Erb.	
pr.12-73	Filed notice of deposition by Trustee upon Florence Barof et al	
pr.16-73	Filed notice of deposition by Trustee upon H.M.Mardos et al	
ay 16-73	Filed Referee's Certificate on pet'n for review-Ret.5-30-73 in Rm.110	
ay 16-73	Filed Referee's Certificate on pet'n for review(Pet'n Samuel Lubin) must be returned to Referee Ryan in Rm.238 when completed	
ay 18-73	Filed notice of deposition of Fred. Galiardo by deft.	
ay 30-73	Filed stip & order adjourning hearing to 7-6-73-Pierce, J.	
un 21-73	Filed memorandum of law in support of the pet'n for review of Samuel Lubin claimant.	
un 13-73	Filed memo endorsed on Referee Certificate filed on 5-16-73. Pet'n to review S.Lubin is denied - Pierce, J.	
un.29-73	Filed Trustee memorandum of law in opposition to pet'n for review of Claimant	
un.28-73	Filed order-In view of the foregoing the court vacates its endorsement of 6-12-73 & requests Referee Ryan to forward to the undersigned Chambers papers filed by the parties in accordance with the stip--Pierce, J.	
ul.30-73	Filed Referee's Certificate of pet'n for review by Referee Ryan.	
ug. 2-73	Filed memorandum on behalf of pet'n Edw. Gottlieb.	
ug.10-73	Filed Trustee's memorandum in opposition to pet'n for review by claimant Gottlieb.	
ug.21-73	Filed memo endorsed on 5-16-73 Referee's certificate on pet'n for review. All parties have submitted memoranda in support of & in opposition to claimant Lubin application. The orders are affirmed & pet'n of review is denied-Pierce,J.mailed noti	
	cont'd page #2.	

B

DATE	PROCEEDINGS
Oct.1-73	Filed Claimant's (Samuel Lubin) notice of appeal from order denying pet'n for review dated 8-20-73---Mailed notice.
Oct.9-73	Filed Referee's Certificate on Petition for Review-Ret. on misc. civil motion calendar Part 1 on Tues. Oct. 24,1973 at 11:00 A.M. Rm. 506.
Oct.19-73	Filed trustee's memorandum in opposition to pet'n for review.
Oct.24-73	Filed memorandum in behalf of claimant-respondent, Edward Gottlieb.
Oct.24-73	Filed Claimant's Edw. Gottlieb reply memorandum.
Oct.9-73	Filed statement of J.S.Allee pursuant to Sec.249 Bankruptcy Act.
Nov. 8-73	Filed Stipulation of partial record, true copies and exhibits to be transmitted to the U.S.C.A.
Nov. 8-73	Filed notice of certification of record on appeal.
Jan 4.74	Filed Memorandum Order. Ordered the court affirms the Orders of Referee Ryan dated 6/4/73,& 9/21/73 with respect to the petitions to review of Edward Gottlieb. Pierce J.(mailed notice)
Apr 16.74	Filed Report of Special Master on Trustee's report under Sec. 167(3) of the Bkrptcy Act. Referre Ryan
Apr 16.74	Filed Notice of Filing of Report of Special Master on the applications of Trustee & The Trustee's attys for allowance of Compensation with reimbursement of disbursements. Referre Ryan.
Apr 16.74	Filed Notice of Report of Special Master on Trustee's Report under Sec. 167(3) of the Bkrptcy Act. Referee Ryan.
Apr 16.74	Filed Report of Special Master on the application by the Trustee for an allowance of compensation & on the application of counsel for the Trustee for compensation. Referee Ryan
Apr 16.74	Filed Order. On Report of the Special Master dated 3/6/74, hereby grants the allowances & compensation requested & confirms the Report of the Special Master. Settle Appropriate order on notice.Pierce J. (m/n)
Apr 19.74	Filed Order that the Trustee is to be paid the sumsof $12,500.00 as interim compensation for services rendered & $483.30 for disbursements inturred during the period from 1/6/72 through 6/30/72 as indicated & that Hughes Hubbard & Reed is to be paid the sums of $344,500.00 & $15,852.53 as indicated. Pierce J. (mailed notice)
May 14-74	Filed order directing claimant Edward Gottlieb to turn over $15,000. to the Trustee--Ryan, Referee.in Bankruptcy.
Jun 20.74	Filed Trustee's Notice of Deposition of Edward Gottlieb on7/3/74.
Jun 21.74	Filed Order appointing an individual to serve process.
Jun 20.74	Filed Affidavit of Service by Mail by David Reimer on 6/17/74.
Jun 25.74	Filed Order appointing an individual to served process. Clark.
Jul 30.74	Filed True Copy of Order from the USCA with opinion attached. The Order of the District court is affirmed- [illegible] Docketed as Judgment #74,639. on 7/31/74. (mailed notice)
Feb. 13-75	Filed the Trustee's application for an order fixing the date for the hearing of, and order setting 3-5-75 for a hearing before Bankruptcy Judge Edw. J. Ryan. at 9:30 a.m. Rm. 236 for approval of Trustee's Final Report & allowance of compensation for services rendered as counsel. Notice shall be given to the Securities Investor Protection Corp and S.E.C. A recommendation & report to Judge Pierce be made by Hon. Edw. J. Ryan regarding the proper fees to be allocated to the Referee's Salary & Expense Fund for services rendered by him as Bankruptcy Judge and as Special Master--Pierce, J. Mailed notices.
Mar. 4-75	Filed affdvt of the Gen'l Counsel for Securities Investor Protection Corp. in support of final fee application.
Jul 21-75	Filed Notice that American Bank & Trust Company appeals to the District Court from the Order of Hon E.S. Ryan Bankruptcy Judge dated 6-20-75. Mailed Notice. (Originally filed on 6-27-75 in bankruptcy office)
Jul 21-75	Filed designation of contents for inclusion in record on appeal etc, as indicate

DATE	PROCEEDINGS
Aug 5.75	Filed Pltff Appellant's Brief.
08-20-75	Filed brief for Deft.-Appellee.
08-20-75	Filed Pltffs. Appellant's Reply Brief.
09-05-75	Filed deft Appelee's response to pltff Appellant's Reply Brief.
01-17-76	Filed Opinion #4463 The Report of the Special Master is hereby approved and adopted insofar as it recommends approval of the Trustee's Fin. Report and Account, payment of final compensation to the Trustee, and payment to the Bankruptcy Judges' Salary and expense fund. Counsel is to settle an appropriate order with respect to these matters, on notice to SIPC and The Securities and Exchange Commission. With respect to the application of counsel to the Trustee for final compensation, the infor requested is to be furnished to the Court within 15 days of the entry of this order,, Pierce, J. M. N.
3-19-76	Filed Order that the Trustee's Final Report and Account dtd 2-28-76 is approved and confirmed in all respects Granting the trustees application for full and final compensation and directing payment to the Bankruptcy Judges Salary and Expense Fund as indicated. Pierce, J. M/N
~~3-22-76~~	~~Filed Order and Judgment that the Complaint in this action is dismissed on the grounds of a fair and equitable recovery in the amount of $1,479.66 having been paid over by defts James Lee Clarke and Harvey J. Wilkinson to the deft Corporation Brooks Bros. Miller & Rhoads, Inc. and further ordered that David Lupe is awarded counsel fees in the sum of $999.69 said sum to be paid to him by deft Garfinkel, Brooks Bros. Miller & Rhoads, Inc. within twenty days of the entry of this order, Pierce, J. M/N.~~ IN ERROR
3-25-76	Filed supplemental affidavit of Theodore H. Focht, General Counsel for Sec. Investor Corp. in support of final fee applications.
3-25-76	Filed Order that the Trustees Final Report and Account dtd Feb 28, 1975 is approved and confirmed in all respects, and the Trustees Application dtd 2-28-75 for a of the sum of $18,500 representing the unpaid balance on requested full and final compensation of $31,000 for services rendered as Trustee during the period of Jan 6, 1972 through Jan 31, 1975, and reimbursement of expenses inthe maount of $476.71is granted,and further ordered that payment of the sum of $6,500.00 be made to the Bankruptcy Judges Salary and Expens Fund as reasonable compensation for the services rendered in this proceeding by the Special Master, and further ordered that payment of the above mentioned amounts to both the trustee and the Bankruptcy Judges Salary and Expense Fund by made by the Securities Investor Protection Corporation. Pierce, J. M/N.
3-26-76	Filed Opinion #4123:The sole issue presented on appeal concerns tha application of provisions of Sec. 167 of the Insurance Law of the State of New York to the facts in this case. For the reasons stated, the Court affirms the Order of the Bankruptcy Judge. The Order of the Court is affirmed in all respects. Pierce, J. M/N.
4-5-76	Filed Affidavit of James W. Giddens dtd 3-19-76.
4-8-76	Filed Opinion #. 4200: The court concludes that the compensation sought by consel is fair and reasonable. The application by counsel is granted in the amount of $115, 500 as full and final compensation for its services to the trustee, etc, as indicated. Pierce, J. M/N.
4-9-76	Filed Order that grants application by Counsel to the trustee for full and final compensation as indicated., and ordered that payment of the mentioned amounts to Hughes Hubbard & Reed be made by the Securities Investor Protection Corp. Pierce, J. M/N
4-23-76	Filed Notce that Pl tff Appellant American Bank & trust Company, hereby appeals to the U.S.C.A.P from each and every part of the order of Pierce, J. dtd. 3-25-76 and 3-26-76. as indicated, M/N.
5-28-76	Filed Notice that the record on appeal has been certified and transmitted to the U.S.C.A.F. this date.
7-7-76	Filed notice that the supplemental record on appeal consisting of Bankruptcy Court papers has been certified & sent to USCA.

D

~~Entry~~
File DOCKETED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

1a

In re :

F. O. BAROFF COMPANY, INC., :

Debtor, :

AMERICAN BANK & TRUST COMPANY, :

Plaintiff, : 72 Civ. 60

-against- :

EDWARD S. DAVIS, Trustee for the Liquidation of the Business of F. O. BAROFF COMPANY, Inc., :

Defendant. :

SUMMONS AND NOTICE OF TRIAL

To the above-named defendant:

YOU ARE HEREBY summoned and required to serve upon Reavis & McGrath, plaintiff's attorney, whose address is 1 Chase Manhattan Plaza, New York, New York 10005, a motion or an answer to the complaint which is herewith served upon you, on or before July 16, 1974, and to file the motion or answer with this court not later than the second business day thereafter. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

YOU ARE HEREBY notified that trial of the proceeding commenced by this complaint has been set for July 24, 1974, at 10 o'clock a.m., in Room 23G, United States Courthouse, Foley Square, New York, New York.

Edward S. Ryan,
Bankruptcy Judge

REAVIS & McGRATH

By: _____
A Member of the Firm
1 Chase Manhattan Plaza
New York, New York 10005
(212) 269-7600

Date of Issuance: June 17, 1974

6/17/74

1a

Complaint

DOCKETED

2a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

In re :

F. O. BAROFF COMPANY, INC., :

Debtor, :

AMERICAN BANK & TRUST COMPANY, : Complaint

Plaintiff, : 72 Civ. 60

- against - :

EDWARD S. DAVIS, Trustee for the Liquidation of the Business of F. O. Baroff Company, Inc., :

Defendant. :

- X

Plaintiff, American Bank & Trust Company, by its attorneys, Reavis & McGrath, for its complaint, alleges that:

JURISDICTION

1. This action arises under the Securities Investor Protection Act of 1970, 15 U.S.C. 78aaa et seq., and Rules 701 and 765 of the Rules of Bankruptcy Procedure. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars.

THE PARTIES

2. Plaintiff American Bank & Trust Company (hereafter "American") is a banking corporation incorporated under the laws of the State of New York having its principal place of business in the State of New York.

3. Defendant Edward S. Davis is the Trustee (hereafter "Trustee") for the liquidation of the business of F. O. Baroff Company, Inc. having been appointed by order of the United States

District Court for the Southern District of New York pursuant to Section 5(b)(3) of the Securities Investor Protection Act of 1970.

COUNT I

4. On or about January 6, 1972, by order of the United States District Court for the Southern District of New York, F. O. Baroff Company, Inc. (hereafter "Baroff") was placed in liquidation pursuant to the Securities Investor Protection Act of 1970; said order stays all creditors from commencing any actions against Baroff.

5. Prior thereto Baroff was engaged in business as a stock brokerage firm in the City and State of New York; it was an "over the counter" firm and was not a member of either the New York Stock Exchange or the American Stock Exchange.

6. On or about January 9, 1970, American entered into a Loan and Collateral Security Agreement with Baroff, pursuant to which it agreed to clear Baroff's transactions with respect to the purchase and sale of securities and to loan and advance to Baroff varying sums of money in connection with the operation of its business. In connection therewith, Baroff opened a checking account with American to facilitate the foregoing relationship.

7. As part of its agreement to clear securities transactions for Baroff, American also agreed to place its "signature guaranteed" stamp on securities which had been sold through Baroff.

8. American is a secured creditor of Baroff and has timely filed a proof of claim in the liquidation proceedings, a copy of which is annexed hereto as Exhibit A. American, as

part of its proof of claim, made claim for any loss, liability or damage which it might incur as a result of claims made against it arising from certain transactions relating to securities registered in the name of Esther I. Corey.

9. Upon information and belief, Mrs. Esther I. Corey is a resident of Pennsylvania. She claims that on or about April 29, 1971, certain certificates of stock owned by her were stolen and that thereafter her endorsements were forged thereon. (See affidavits of Mrs. Corey, copies of which are annexed hereto as Exhibit B.)

10. Certain of these securities (a list of which is annexed hereto as Exhibit C) were thereafter sold through Baroff which guaranteed the endorsements and signatures of Mrs. Corey which appeared thereon. Thereafter, American, at Baroff's request, placed its "signature guaranteed" stamp on those securities. All of the securities were sold over the New York Stock Exchange.

11. In connection with these sales, checks of Baroff, drawn upon American by it in the sum of $270,352.85 in July and August of 1971, and payable to Esther I. Corey, were paid by American in reliance upon the endorsements of Mrs. Corey. These endorsements are now claimed to be forgeries.

12. Esther I. Corey has commenced an action in Pennsylvania against the following corporations and/or their transfer agents with respect to the purported wrongful transfer of her securities:

AMERICAN TELEPHONE & TELEGRAPH COMPANY, a corporation; ARMCO STEEL CORPORATION, a corporation; THE CHESAPEAKE & OHIO RAILWAY COMPANY, a corporation; E. I. DuPONT De NEMOURS & COMPANY, a corporation; GENERAL ELECTRIC COMPANY, a corporation; GENERAL MOTORS CORPORATION, a corporation; INTERNATIONAL HARVESTER COMPANY, a corporation; S. S. KRESGE COMPANY, a corporation; MELVILLE SHOE CORPORATION, a corporation; MOBIL OIL CORPORATION, a corporation; NATIONAL STEEL COMPANY, a corporation; THE PENNSYLVANIA RAILROAD COMPANY, a corporation; PHILADELPHIA ELECTRIC COMPANY, a corporation; THE PILLSBURY COMPANY, a corporation; READING COMPANY, a corporation; F. W. WOOLWORTH COMPANY, a corporation.

13 American has been informed by certain of said corporations and/or their transfer agents that they will look to American to hold them harmless in said action as a result of American having placed its "signature guaranteed" stamp on the securities in question, each of which was sold through Baroff and cleared through American. Annexed hereto as Exhibits D through I are letters received by American from or on behalf of certain of the above named corporations and/or their transfer agents setting forth their claims against American as a result of the forgeries.

14. In connection with the operation of its business Baroff obtained a Brokers' Blanket Bond (No. S 623572) from the Insurance Company of North America (hereafter "INA"), a copy of which is annexed hereto as Exhibit J.

15. Losses covered by the Bond include the following:

DISHONESTY

(A) Loss through any dishonesty or fraudulent act of any of the Employees, committed anywhere and whether committed directly or by collusion with others, including loss of Property through any such act of any of the Employees.

* * *

FORGERY OR ALTERATION

(D) Loss through forgery as to a signature, or alteration of, or in any bills of exchange, checks, drafts, acceptances, certificates of deposit or other written orders or directions to pay sums certain in money, due bills, money orders, warrants, orders upon public treasuries, letters of credit, written instructions or advices which are directed to the Insured and authorize or acknowledge the transfer, payment, delivery or receipt of any funds or Property and bear the forged signature of, or have been altered without the consent of any customer, stockbroker, banker or other financial institution, withdrawal orders or receipts for the withdrawal of funds or Property, or receipts or certificates of deposit for Property and bearing the name of the Insured as issuer, excluding, however, coupon and serial notes, bonds, scrip, debentures and obligations of a similar nature, whether registered or unregistered, and coupons attached thereto or detached therefrom.

Any check or draft (a) made payable to a fictitious payee and endorsed in the name of such fictitious payee or (b) procured in a face to face transaction with the maker or drawer thereof or with one acting as agent of such maker of drawer by anyone impersonating another and made or drawn payable to the one so impersonated and endorsed by anyone other than the one impersonated, shall be deemed to be forged as to such endorsement.

Mechanically reproduced facsimile signatures are treated the same as handwritten signatures.

SECURITIES FORGERY

(E) Loss sustained by the Insured, including loss sustained by reason of liability imposed on the Insured by law or by the constitution, rules or regulations of any Stock Exchange of which the Insured is a member or which would have been imposed on the Insured if the Insured had been a member thereof, through having, in good faith and in the ordinary course of business, whether for its own account or for the account of others, in any representative, fiduciary, agency or any other capacity, either gratuitiously or otherwise, purchased or otherwise acquired, accepted or received, or sold or delivered or given any value, extended any credit or assumed any liability, on the faith of, or otherwise acted upon any securities or other

documents of title which prove to have been raised or otherwise altered, or lost or stolen, or on which the signature of any person signing in any capacity proves to have been counterfeited or forged, or through having, in good faith and in the ordinary course of business, guaranteed in writing or witnessed any signatures, whether for valuable consideration or not and whether or not such guaranteeing or witnessing is ultra vires the Insured, upon any transfers, assignments, bills of sale, powers of attorney, guarantees, endorsements or other documents upon or in connection with any securities or other documents of title and which pass or purport to pass title to such securities or other documents of title: EXCLUDING, however, in any event, any loss as specified in Insuring Clause (D). 7a

Mechanically reproduced facsimile signatures are treated the same as handwritten signatures.

16. ~~Upon information and belief, two of~~ Baroff's ~~employees knowingly aided and abetted in the~~ wrongful sale of Mrs. Corey's securities. (See copy of a letter dated February 13, 1974 of Postal Inspector S. N. McKusick annexed hereto as Exhibit K.)

17. Baroff is liable to American as a matter of law since it guaranteed the forged signatures of Esther I. Corey.

18. By letter dated April 2, 1974, INA advised that it would be willing to pay $100,000, the maximum coverage under the Bond, in connection with Mrs. Corey's claim upon the Trustee filing a proof of claim under the policy. A copy of that letter is annexed as Exhibit L.

19. Said insurance proceeds would belong to American by virtue of its claim against Baroff relating to Baroff's guarantee of Mrs. Corey's signature.

20. Upon information and belief, the assets of Baroff's estate are insufficient to even partially satisfy

American's claim.

21. Despite Baroff's liability to American by virtue of its guarantee of Mrs. Corey's endorsements and Baroff's insolvency, the Trustee refuses to file any claim with INA, as a result of which American will be irreparably injured in that Baroff's estate will be unable to compensate American for any loss it incurs as a result of the Corey transactions.

22. American has no adequate remedy at law.

WHEREFORE, American demands judgment directing Edward S. Davis, as Trustee to file a claim under the debtor's Brokers' Blanket Bond together with such other relief as may be proper plus the costs and disbursements of this action.

REAVIS & McGRATH

By _____
A Member of the Firm
Attorneys for Plaintiff,
American Bank & Trust Company
1 Chase Manhattan Plaza
New York, New York 10005
(212) 269-7600

Exhibit A to L

Annexed to Original Complaint

Printed Herein Pages 19a to 207a

Amended Supplemental Complaint

ENTERED
10/2/74

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

9a

In re	:	
F. O. BAROFF COMPANY, INC.,	:	72 Civ. 60
Debtor.	:	
AMERICAN BANK & TRUST COMPANY,	:	
Plaintiff,	:	AMENDED SUPPLEMENTAL COMPLAINT
-against-	:	
EDWARD S. DAVIS, Trustee for the Liquidation of the Business of F. O. Baroff Company, Inc.,	:	
Defendant.	:	

Plaintiff, American Bank & Trust Company, by its attorneys, Reavis & McGrath, for its complaint, alleges that:

JURISDICTION

1. This action arises under the Securities Investor Protection Act of 1970, 15 U.S.C. 78aaa et seq., and Rules 701 and 765 of the Rules of Bankruptcy Procedure. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars.

THE PARTIES

2. Plaintiff American Bank & Trust Company (hereafter "American") is a banking corporation incorporated under the laws of the State of New York having its principal place of business in the State of New York.

3. Defendant Edward S. Davis is the Trustee (hereafter "Trustee") for the liquidation of the business of F. O. Baroff Company, Inc. having been appointed by order of the United States District Court for the Southern District of New York pursuant to Section 5(b)(3) of the Securities Investor Protection Act of 1970.

COUNT I

4. On or about January 6, 1972, by order of the United States District Court for the Southern District of New York, F. O. Baroff Company, Inc. (hereafter "Baroff") was placed in liquidation pursuant to the Securities Investor Protection Act of 1970; said order stays all creditors from commencing any actions against Baroff.

5. Prior thereto Baroff was engaged in business as a stock brokerage firm in the City and State of New York; it was an "over the counter" firm and was not a member of either the New York Stock Exchange or the American Stock Exchange.

6. On or about January 9, 1970, American entered into a Loan and Collateral Security Agreement with Baroff, pursuant to which it agreed to clear Baroff's transactions with respect to the purchase and sale of securities and to loan and advance to Baroff varying sums of money in connection with the operation of its business. In connection therewith, Baroff opened a checking account with American to facilitate the foregoing relationship.

7. As part of its agreement to clear securities transactions for Baroff, American also agreed to place its "signature guaranteed" stamp on securities which had been sold through Baroff.

8. American is a secured creditor of Baroff and has timely filed a proof of claim in the liquidation proceedings, a copy of which is annexed hereto as Exhibit A. American, as part of its proof of claim, made claim for any loss, liability or damage which it might incur as a result of claims made against it arising from certain transactions relating to securities registered in the name of Esther I. Corey.

9. Upon information and belief, Mrs. Esther I. Corey is a resident of Pennsylvania. She claims that on or about April 29, 1971, certain certificates of stock owned by her were stolen and that thereafter her endorsements were forged thereon. (See affidavits of Mrs. Corey, copies of which are annexed hereto as Exhibit B.)

10. Certain of these securities (a list of which is annexed hereto as Exhibit C) were thereafter sold through Baroff which guaranteed the endorsements and signatures of Mrs. Corey which appeared thereon. Thereafter, American, at Baroff's request, placed its "signature guaranteed" stamp on those securities. All of the securities were sold over the New York Stock Exchange.

11. In connection with these sales, checks of Baroff, drawn upon American by it in the sum of $270,352.85 in July and August of 1971, and payable to Esther I. Corey, were paid by American in reliance upon the endorsements of Mrs. Corey. These endorsements are now claimed to be forgeries.

12. Esther I. Corey has commenced an action in Pennsylvania against the following corporations and/or their transfer agents with respect to the purported wrongful transfer of her securities:

AMERICAN TELEPHONE & TELEGRAPH COMPANY, a corporation; ARMCO STEEL CORPORATION, a corporation; THE CHESAPEAKE & OHIO RAILWAY COMPANY, a corporation; E. I. DuPONT De NEMOURS & COMPANY, a corporation; GENERAL ELECTRIC COMPANY, a corporation; INTERNATIONAL HARVESTER COMPANY, a corporation; S. S. KRESGE COMPANY, a corporation; MELVILLE SHOE CORPORATION, a corporation; MOBILE OIL CORPORATION, a corporation; NATIONAL STEEL COMPANY, a corporation; THE PENNSYLVANIA RAILROAD COMPANY, a corporation; PHILADELPHIA ELECTRIC COMPANY, a corporation; THE PILLSBURY COMPANY, a corporation; READING COMPANY, a corporation; F. W. WOOLWORTH COMPANY, a corporation.

13a

13. American has been informed by certain of said corporations and/or their transfer agents that they will look to American to hold them harmless in said action as a result of American having placed its "signature guaranteed" stamp on the securities in question, each of which was sold through Baroff and cleared through American. Annexed hereto as Exhibits D through I are letters received by American from or on behalf of certain of the above named corporations and/or their transfer agents setting forth their claims against American as a result of the forgeries.

14. On August 30, 1974 American paid the sum of $180,449.58 in settlement of Mrs. Corey's claim with respect to the transfer of her securities.

15. In connection with the operation of its business Baroff obtained a Brokers' Blanket Bond (No. S 623572) from the Insurance Company of North America (hereafter "INA"), a copy of which is annexed hereto as Exhibit J. Upon information and belief said Bond was issued and/or delivered within the State of New York.

16. Losses covered by the Bond include the following:

DISHONESTY

(A) Loss through any dishonesty or fraudulent act of any of the Employees, committed anywhere and whether committed directly or by collusion with others, including loss of Property through any such act of any of the Employees.

* * *

FORGERY OR ALTERATION

(d) Loss through forgery as to a signature, or alteration of, or in any bills of exchange, checks, drafts, acceptances, certificates of deposit or other written orders or directions to pay sums certain in money, due bills, money orders, warrants, orders upon public treasuries, letters of credit, written instructions or advices which are directed to the Insured and authorize or acknowledge the transfer, payment, delivery or receipt of any funds or Property and bear the forged signature of, or have been

altered without the consent of any customer, stockbroker, banker or other financial institution, withdrawal orders or receipts for the withdrawal of funds or Property, or receipts or certificates of deposit for Property and bearing the name of the Insured as issuer, excluding, however, coupon and serial notes, bonds, script, debentures and obligations of a similar nature, whether registered or unregistered, and coupons attached thereto or detached therefrom.

Any check or draft (a) made payable to a fictitious payee and endorsed in the name of such fictitious payee or (b) procured in a face to face transaction with the maker or drawer thereof or with one acting as agent of such maker of drawer by anyone impersonating another and made or drawn payable to the one so impersonated and endorsed by anyone other than the one impersonated, shall be deemed to be forged as to such endorsement.

Mechanically reproduced facsimile signatures are treated the same as handwritten signatures.

SECURITIES FORGERY

(E) Loss sustained by the Insured, including loss sustained by reason of liability imposed on the Insured by law or by the constitution, rules or regulations of any Stock Exchange of which the Insured is a member or which would have been imposed on the Insured if the Insured had been a member thereof, through having, in good faith and in the ordinary course of business, whether for its own account or for the account of others, in any representative, fiduciary, agency or any other capacity, either gratitiously or otherwise, purchased or otherwise acquired, accepted or received, or sold or delivered or given any value, extended any credit or assumed any liability, on the faith of, or otherwise acted upon any securities or other

documents of title which prove to have been raised or otherwise altered, or lost or stolen, or on which the signature of any person signing in any capacity proves to have been counterfeited or forged, or through having, in good faith and in the ordinary course of business, guaranteed in writing or witnessed any signatures, whether for valuable consideration or not and whether or not such guaranteeing or witnessing is ultra vires the Insured, upon any transfers, assignments, bills of sale, powers of attorney, guarantees, endorsements or other documents upon or in connection with any securities or other documents of title and which pass or purport to pass title to such securities or other documents of title: EXCLUDING, however, in any event, any loss as specified in Insuring Clause (D).

Mechanically reproduced facsimile signatures are treated the same as handwritten signatures.

17. Upon information and belief a man named Donald A. Geel, employed by Baroff as a registered representative, aided and abetted in the wrongful sale and transfer of Mrs. Corey's securities. (See copy of a letter dated February 13, 1974 of Pbstal Inspector S. N. McKusick annexed hereto as Exhibit K.)

18. (By virtue of the foregoing and by virtue of the pertinent provisions of the Uniform Commercial Code,) Baroff is liable to American as a matter of law since it guaranteed the forged signatures of Esther I. Corey.

19. By letter dated April 2, 1974, INA advised that it would be willing to pay $100,000, the maximum coverage under

the Bond, in connection with Mrs. Corey's claim upon the Trustee filing a proof of claim under the policy. A copy of that letter is annexed as Exhibit L.

20. Said insurance proceeds would belong to American by virtue of its claim against Baroff relating to Baroff's guarantee of Mrs. Corey's signature (and by virtue of the pertinent provisions of the Insurance Laws of the State of New York.)

21. Upon information and belief Baroff is insolvent. The assets of Baroff's estate are insufficient to even partially satisfy American's claim.

22. Despite Baroff's liability to American by virtue of its guarantee of Mrs. Corey's endorsements and Baroff's insolvency, the Trustee refuses to file any claim with INA, as a result of which American will be irreparably insured in that Baroff's estate will be unable to compensate American for any loss it incurs as a result of the Corey transactions.

23. American has no adequate remedy at law.

WHEREFORE, American demands judgment directing Edward S. Davis, as Trustee to file a claim under the debtor's Brokers' Blanket Bond together with such other relief as may

be proper plus the costs and disbursements of this action.

REAVIS & MCGRATH

By _____

Stephen R. Steinberg
A Member of the Firm
Attorneys for Plaintiff,
American Bank & Trust Company
1 Chase Manhattan Plaza
New York, New York 10005

Exhibit A

(Proof of Claim and Statement)

Annexed to Amended Supplemental Complaint

Exhibit A to L

Annexed to Original Complaint

Printed Herein Pages 19a to 207a

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff;

SECURITIES INVESTOR PROTECTION CORPORATION,
Applicant,

v.

F. O. BAROFF COMPANY, INC.,
Defendant.

Civil Action
File No. [illegible]
72 Civ. 60

PROOF OF CLAIM BY CORPORATION

STATE OF New York }
COUNTY OF New York } ss.:

HERBERT MARDOS ....., of No. 91-26 ....., Street ..Park Lane South, Woodha
in the County of ..Queens ....., State of ..New York ....., says:

1. That he is the Vice-President of American Bank & Trust Co. a corporation organized and existing under the laws of the State of . New York ....., and carrying on business at No. 70 Wall Street ..... Street, in New York ....., County of ....New York ....., State of .....New York ....., and is duly authorized to make this proof of claim on its behalf.

2. That F. O. Baroff Company, Inc., the above-named defendant, was at and before January 6, 1972 and still is, justly and truly indebted [or liable] to this corporation in the sum of see attached state dollars.

3. That the consideration of this debt [or liability] is as follows:
.....see attached statement.....
.....

4. That no part of the debt [or liability] has been paid, except .....
.....see attached statement.....
.....

5. That there are no set-offs or counterclaims to the debt [or liability] except .....
.....

6. That the corporation does not hold, and has not, nor has any person by its order, or to the knowledge or belief of the undersigned, for its use, had or received, any security or securities for the debt [or liability] except ....see attached statement.....
.....
.....
.....

7. [If the debt or liability is founded upon an instrument of writing] That the instrument upon which the debt [or liability] is founded is attached hereto [or is lost or destroyed, as set forth in the affidavit attached hereto]. see attached statement

8. [If the debt is founded upon an open account] That the debt was [illegible] due on January 6, 1972 ..... [illegible]; that no note or other negotiable instrument has been received for such account or any part thereof [illegible] and that no judgment has been rendered thereon, except .....
.....

Dated at New York, N.Y...., this ....30th...., day of .....June....., 1972.

[illegible],
....Vice-President..... of the Corporation.

There are penalties for presenting fraudulent claims.

ANY CLAIM YOU MAY HAVE AS A BROKER-DEALER OR AS A CUSTOMER OF F. O. BAROFF COMPANY, INC., SHOULD NOT BE FILED ON THIS FORM, BUT SHOULD BE FILED ON THE APPROPRIATE FORM FOR BROKER-DEALERS OR FOR CUSTOMERS, WHICH YOU MAY OBTAIN FROM THE TRUSTEE.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff;

SECURITIES INVESTOR PROTECTION CORPORATION,
Applicant,

v.

F. O. BAROFF COMPANY, INC.,
Defendant,

Civil Action
File No. 72 Civ. 60

STATEMENT ATTACHED TO AND MADE PART OF PROOF OF CLAIM OF AMERICAN BANK & TRUST COMPANY

ALL CLAIMS ARE SUBMITTED HEREIN WITHOUT PREJUDICE TO, AND RESERVING ALL RIGHTS OF, CLAIMANT, AMERICAN BANK & TRUST COMPANY, AS A SECURED CREDITOR AND IN AND TO ALL PROPERTY HELD BY CLAIMANT AS SECURITY FOR THE OBLIGATIONS OF F.O. BAROFF COMPANY, INC. TO CLAIMANT.

CLAIMANT RESERVES THE RIGHT TO AMEND THIS PROOF OF CLAIM.

Statement with respect to Paragraph No. 2 of Proof of Claim:

The amount of Claimant's claim cannot be ascertained at present until after liquidation of the collateral held by Claimant, the determination of the contingent liability of F. O. Baroff Company, Inc. (hereinafter "Baroff") under claims Nos. 4, 5 and 6 and the determination of the liability of Baroff under Claim No. 7. The amount of this proof of claim will be reduced upon receipt by Claimant of the proceeds of the collateral.

Statement with respect to Paragraph No. 3 of Proof of Claim:

Claim No. 1

1. For $95,370.75 plus interest representing balance due for loans and advances made to Baroff from February 3, 1970 to January 6, 1972.

Exhibit A

Claim No. 2

2. For $137,602.56 plus interest representing balance due for loans and advances made to Baroff against deliveries of stock and issuance of clearance checks to other brokers from February 3, 1970 to January 6, 1972.

Claim No. 3

3. For $27,722.95 plus interest representing overdraft in checking account of Baroff with the Claimant.

Claim No. 4

4. For $22,613.33 plus interest and expenses, costs and disbursements relating thereto in the event that the Claimant is held liable upon an official check issued by Claimant at Baroff's request in said sum on January 3, 1972 to one Edward Gottlieb in payment of an alleged obligation of Baroff to said Edward Gottlieb, payment of which check has been stopped. Said Edward Gottlieb has commenced an action against Claimant in the Supreme Court of the Stateof New York County of New York.

Claim No. 5

5. For $25,000 should the Trustee prevail in a proceeding commenced for the turnover to it of said amount which was received by Claimant from the collection of a promissory note of one Leon Charney endorsed and payable to Baroff and delivered to Claimant by Baroff.

Claim No. 6

6. All loss, liability and damage which may be incurred by Claimant by reason of certain transactions involving one Esther

I. Corey, as follows: Said Esther I. Corey claims that on or about April 29, 1971 certain certificates of stock owned byher were stolen and that the endorsements of her name forged thereon. The signatures of Esther I. Corey on said certificates were guaranteed by Baroff. Thereafter Claimant at Baroff's request placed its "signature guaranteed" stamp on each of said certificates. Certain of said certificates were sold through Baroff.

In connection with said transactions, checks of Baroff in the total sum of $270,352.35 drawn by Baroff upon Claimant in July and August, 1971 and made payable at Baroff's instructions to Esther I. Corey were paid by Claimant in reliance upon endorsements of Esther I. Corey, now claimed to be forged.

While Claimant denies that it has any liability to Esther I. Corey, Baroff will be liable over to Claimant if Claimant is held liable to her. In connection therewith Claimant asserts that Baroff is liable as a matter of law and by reason of its Loan and Collateral Security Agreement and also because it acted improperly and negligently and failed to take such reasonable steps as would have enabled it to prevent the loss and that Baroff failed "to know" and identify its customer.

The exact amount of the loss, liability or damage which Claimant may suffer by reason of the foregoing, it if is held liable, is not presently known but is estimated to be approximately $300,000.00 including principal, interest and dividends allegedly not received by Esther I. Corey on the securities above described.

In connection with the foregoing and in addition to its other rights and remedies, and without prejudice thereto, Claimant

asserts a right of equitable subrogation to all rights of Baroff in the premises including but not limited to rights against the recipients of the funds and the endorsing banks on any of the checks and in and to such insurance policies and coverages as Baroff may have.

Claimant specifically reserves the right to amend this claim should any additional instances of claims of forgeries be made upon it.

Claim No. 7

7. All costs, expenses and counsel fees incurred by Claimant in enforcing the obligations of Baroff to Claimant in accordance with the terms of the Loan and Collateral Security Agreement dated January 9, 1970, copy of which is annexed hereto.

Statement with respect to Paragraphs Nos. 4 and 6 of Proof of Claim:

The following payments have been received and the following collateral is held by Claimant on account of the claims of the Claimant:

(a) $94,191.19 collected from other brokers on outstanding drafts;

(b) $7,000 representing a credit in the Clearance Account of Baroff;

(c) $225.66 representing a credit in checking account;

(d) $25,000.00 received from collection of promissory note of one Leon Charney payable to Baroff and endorsed and delivered to Claimant by Baroff.

(e) $205,319.54 plus interest held by Irving Trust Company as escrowee pursuant to orders of this court and agreement with the

Trustee resulting from the sale of certain shares of stock originally held as collateral by the Claimant;

(f) 5,000 shares Jama Productions Inc.

Statement with respect to Paragraph No. 7 of Proof of Claim:

Baroff entered into a Loan and Collateral Security Agreement with Claimant dated January 9, 1970, copy of which is annexed hereto. Baroff's liability and Claimant's rights as a secured creditor are based in part thereon.

LOAN AND COLLATERAL SECURITY AGREEMENT

25a

In consideration of loans and/or other financial accommodations heretofore given or extended, or to be given or extended, or continued, to the undersigned by AMERICAN BANK & TRUST COMPANY (hereinafter called the "Bank"), including the acceptance by the Bank or any of its correspondents of any draft or drafts drawn on the Bank or on any of its correspondents by the undersigned or by persons designated in writing by the undersigned to the Bank for that purpose and also including any advance or advances by the Bank to the undersigned in connection with any item or items received by the Bank or by any of its correspondents for collection, the undersigned hereby agrees that the Bank shall have all of the rights given herein against the undersigned in addition to those given by law or by any other agreement or document:

1. All of the undersigned's places of business are in the same county as the undersigned's place of business appearing after the undersigned's signature hereto except (Not applicable to individuals)

office at 26 Linden Ave Springfield New Jersey, said office to be closed on or about Feb 1,1970.

2. The term "Liabilities" as herein used shall include all indebtedness, obligations and liabilities of any kind of the undersigned to the Bank and also to others to the extent of their participations granted, or interests therein created, or acquired for them, by the Bank, now or hereafter existing, or hereafter arising, including all future advances, obligations, liabilities and indebtedness arising directly between the undersigned and the Bank, or acquired outright, conditionally or as collateral security from another, by the Bank, whether absolute or contingent, joint or several, secured or unsecured, due or not due, direct or indirect, including, without limiting the generality of the foregoing, liabilities to the Bank of the undersigned as a member of any partnership, syndicate, association or other group, and whether heretofore or hereafter incurred or given by the undersigned as principal, surety, endorser, guarantor or otherwise.

3. The term "Security" as herein used shall include the balance of every account, now or hereafter existing, of the undersigned with the Bank, and/or any individuals, partnerships, or corporations acting as nominee for or on behalf of the Bank and/or any subsidiary or entity controlled by, or affiliated with, the Bank (hereinafter called "Associates"), and all claims of the undersigned against the Bank or its Associates, all money, negotiable instruments, commercial paper, chattel paper, notes, bonds, stock, credits, choses in action, documents of title, instruments, claims, demands or any interest in any thereof and any other property, rights and interests of the undersigned or any evidence thereof, which are now or at any time shall be delivered to or otherwise come into the possession or custody or under the control of the Bank or its Associates for any purpose. The Bank shall be deemed to have possession, control or custody of any of the Security in transit to or set apart for it or its Associates.

4. As security for any and all the Liabilities, including without limitation all future advances, the undersigned hereby pledges to the Bank all Security capable of pledge and sells, assigns and transfers to the Bank, and/or gives it a present security interest in and right of set-off against all the right, title and interest of the undersigned in and to any thereof incapable of pledge or inadequately pledged, such pledge and/or sale, assignment, transfer and/or lien being made for the protection and security of the Bank and/or any others (but in such proportions as the Bank may determine if held for the benefit of more than one, such determination of the Bank to be conclusive) having participations or interests in the Liabilities as aforesaid.

5. The right is expressly granted to the Bank, at its discretion, to file one or more financing statements without the signature of the undersigned under the Uniform Commercial Code naming the undersigned as debtor and the Bank as secured party and indicating therein the types or describing the items of Security herein specified. The undersigned will execute any additional notices, affidavits or other documents as the Bank may deem necessary to protect its security interest. The undersigned hereby agrees to pay on demand and/or authorizes the Bank to charge its account with the cost of any and all filing fees and costs which the Bank deems it necessary to incur to protect its interest in the Security. Without the prior written consent of the Bank, the undersigned will not file or authorize or permit to be filed in any jurisdiction any such financing or like statement in which the Bank is not named as the sole secured party. With respect to the Security, or any part thereof, which at any time shall come into possession or custody or under the control of the Bank or any of its agents, Associates or correspondents, for any purpose, the right is expressly granted to the Bank, at its discretion, to transfer to or register in the name of itself or its nominee any of the Security, whether or not so transferred, to receive the income and dividends thereon, including stock dividends and rights to subscribe, to hold the same as a part of the Security and/or apply the same as hereinafter provided; to exchange any of the Security for other property upon any reorganization, recapitalization, or other readjustment and in connection therewith to deposit any of the Security with any committee or depositary upon such terms as it may determine; to vote the Security and to exercise or cause its nominee to exercise all or any powers with respect thereto with the same force and effect as an absolute owner thereof; all without notice and without liability except to account for property actually received by it. The Bank shall exercise reasonable care in the custody and preservation of any and all Security in its possession, to the extent required by applicable statute; and shall be deemed to have exercised reasonable care if it takes such action for that purpose as the undersigned shall reasonably request in writing; but no omission to do any act not requested shall be deemed a failure to exercise reasonable care, and no omission to comply with any request of the undersigned shall of itself be deemed a failure to exercise reasonable care. Any right of set-off exercised by the Bank shall be deemed to have been exercised immediately on the occurrence of an event of default as hereinafter defined, even though such set-off is made or entered on the books of the Bank subsequent thereto.

6. The Bank in its discretion may, whether or not any of the Liabilities be due, in its name or in the name of the undersigned or otherwise, demand, sue for, collect or receive any money or property at any time payable or receivable on account of or in exchange for, or make any compromise or settlement deemed desirable with respect to any of the Security, but shall be under no obligation so to do, or the Bank may extend the time of payment, arrange for payment in installments, or otherwise modify the terms of, or release, any of the Security, without thereby incurring responsibility to, or discharging or otherwise affecting any liability of, the undersigned. The Bank shall not be required to take any steps to preserve any rights against prior parties to any of the Security. Upon default hereunder or in connection with any of the Liabilities (whether such default be that of the undersigned or of any other party thereon), the undersigned shall, at the request of the Bank, assemble the Security at such place or places as the Bank designates in its request. In addition to any other rights granted by law the Bank shall have the rights and remedies with respect to the Security of a secured party under the Uniform Commercial Code (whether or not the Code is in effect in the jurisdiction where the rights and remedies are asserted). In addition, with respect to the Security, or any part thereof, which shall then be or shall thereafter come into the possession or custody of the Bank, or any of its Agents, Associates or correspondents, the Bank may sell or cause to be sold in the Borough of Manhattan, New York City, or elsewhere, in one or more sales or parcels, at such price as the Bank may deem best, and for cash or on credit or for future delivery, without assumption of any credit risk, all or any of the Security, at any broker's board or at public or private sale, without demand of performance or notice of intention to sell or of time or place of sale (except such notice as is required by applicable statute and cannot be waived), and the purchaser of any or all of the Security so sold shall thereafter hold the same absolutely, free from any claim or right of whatsoever kind, including any equity of redemption, of the undersigned, any such demand, notice or right and equity being hereby expressly waived and released. Unless the Security is perishable or threatens to decline speedily in value or is of a type sold on a recognized market, the Bank will give the undersigned, reasonable notice of the time and place of any public sale thereof, or of the time after which any private sale or other intended disposition is to be made. Any requirements of reasonable notice shall be met if such notice is mailed, postage prepaid, to the undersigned at the address given below, at least five days before the time of the sale or disposition. The Bank may, in its own name, or in the name of any designee, buy at any public sale and if the Security is of a type sold in a recognized market, or is of a type which is the subject of widely distributed standard price quotations, buy at private sale. The undersigned will pay to the Bank all expenses (including attorneys' fees) of, or incident to, the enforcement of any of the provisions hereof or of any of the Liabilities, or any actual or attempted sale, or any exchange, enforcement, collection, compromise or settlement of any of the Security or receipt of the proceeds thereof, and for the care of the Security and defending or asserting the rights and claims of the Bank in respect thereof by litigation or otherwise, including expense of insurance; and all such expenses shall be Liabilities within the terms of this agreement. Attorneys' fees as used in this agreement shall be defined as 15% of the Liabilities due and owing to the Bank at the time the matter is referred to the said attorneys, or the reasonable value of the services of the attorneys, whichever is greater. The Bank, at any time, at its option, may apply all or any net cash receipts from the Security to the payment of principal of and/or interest in whole or in part on any or all of the Liabilities, whether or not then due, applying or reapplying, or distributing or allocating the same as it shall elect, making proper rebate of interest or discount. Notwithstanding that the Bank, whether in its own behalf and/or in behalf of another or others, may continue to hold Security and regardless of the value thereof, the undersigned shall be and remain liable for the payment in full, principal and interest, of any balance of the Liabilities and expenses at any time unpaid. If any liabilities shall be contingent, the Bank may retain sufficient of such proceeds to cover the largest aggregate sum which may become due or owing thereunder with prospective interest, costs, expenses and attorneys' fees and shall not be charged with any interest with respect thereto.

7. Upon demand from the Bank at any time or times that the undersigned is liable to the Bank, the undersigned shall assign, transfer or deliver to the Bank additional Security of a value and character satisfactory to the Bank or make such payment on account of Liabilities as the Bank may require.

Any or all of the Liabilities of the undersigned to the Bank shall, at the option of the Bank and notwithstanding any time or credit allowed by any instrument evidencing a Liability, be immediately due and payable without notice or demand upon the occurrence of any of the following events of default: (a) default in the payment or performance, when due or payable, of any Liabilities of the undersigned, or of any maker, drawer, acceptor, endorser, guarantor, surety, accommodation party or copartnership of which the undersigned is a member, or other person liable for any Liabilities of the undersigned to the Bank; (b) failure of the undersigned to pay when due any tax or any premium on any life insurance policy assigned to the Bank as collateral; (c) the making by the undersigned of any misrepresentation to the Bank for the purpose of obtaining credit or an extension of credit; (d) failure of the undersigned to furnish forthwith on demand by the Bank financial information or to permit the inspection of books or records; (e) if any proceeding, procedure, or remedy supplementary to or in enforcement of judgment or any writ or order of attachment or garnishment is issued, made, resorted to or commenced against, or with respect to, any property of the undersigned, or any maker, drawer, acceptor, endorser, surety, guarantor, accommodation party, or copartnership of which the undersigned is a member, or other person liable upon or for any of the Liabilities or Security; (f) calling of a meeting of creditors, appointment of a committee of creditors or liquidating agents, or offering of a composition

or extension to creditors by, for or of the undersigned; (g) insolvency of the undersigned or any maker, drawer, acceptor, endorser, surety, guarantor, accommodation party or other person liable upon or for any of the Liabilities or Security; "Insolvency" of the undersigned or any other person means that there shall have occurred with respect to that person one or more of the following events: Death, including death of a member of a copartnership of which the undersigned is a member; dissolution; termination of existence; insolvency; business failure; adoption of any resolution for dissolution or liquidation; appointment of a receiver of any part of the property of; assignment for the benefit of creditors by; or the filing of a petition in bankruptcy or the commencement of any proceedings under any bankruptcy or insolvency laws, or any laws relating to the relief of debtors, readjustment of indebtedness, reorganization, composition or extension, by or against, such person; (h) suspension of the usual business of the undersigned, or of any copartnership of which the undersigned is a member, or the taking possession of a substantial part of the undersigned's property by any Governmental authority or court at the instance thereof; (i) such a change in the condition of affairs (financial or otherwise) of the undersigned or of any maker, drawer, acceptor, guarantor, surety, accommodation party or copartnership of which the undersigned is a member, or other person liable for any Liability of the undersigned, as in the opinion of the Bank impairs the Bank's Security or increases its risk; (j) any Liabilities of the undersigned or of any such copartnership, maker, drawer, acceptor, endorser, guarantor, surety, accommodation party or other person for borrowed money, become due and payable by acceleration of maturity thereof; (k) failure of the undersigned to observe or perform any of the undersigned's other obligations hereunder or of any other agreement, Liability or obligation to or with the Bank; (l) assignment or encumbrancing the collateral or an equity therein without the express written consent of the Bank.

8. In any litigation or legal proceedings arising out of, or relating to, this agreement or any other indebtedness, liabilities or obligations created herein or related thereto, in which the Bank and any of the undersigned shall be adverse parties, the undersigned waives the right to interpose any defense, set-off or counterclaim of any kind not directly arising therefrom and also waives the right to a trial by jury.

9. If in its sole discretion the Bank deems it desirable, it may remove any security held by it or its agents from the state, city or county or other governmental subdivision in which it may now or hereafter be held or deposited to any place which it designates and there deal with it as herein provided.

10. The Bank may rely on this agreement until such time as an officer of the Bank responsible therefore actually physically receives notice from the undersigned by registered mail advertising it of the desire of the undersigned to terminate this agreement, which termination and notice thereof shall not in any manner or form affect any rights given to the Bank herein or any loans or advances theretofore made by the Bank or any indebtedness, obligations, or liabilities theretofore incurred by the undersigned whether then due or payable, or thereafter to become due or payable.

11. If the time for payment of principal or interest or any other money payable hereunder is extended because said sum becomes due on a Saturday, Sunday or public holiday, interest shall be payable for such extended time.

12. The Bank may, but shall not be obligated to, contest, pay and/or discharge all liens, encumbrances, taxes or assessments on, or claims, actions or demands against, any of the Security without notice to, or the consent of, the undersigned and to take all actions and proceedings in its name or in the name of the undersigned or of any other appropriate person to remove or contest such liens, encumbrances, claims, actions, demands, taxes or assessments and all sums advanced or paid by the Bank and all costs, attorneys' fees and expenses relating thereto shall be Liabilities hereunder.

13. The Bank shall not be deemed to have modified, discharged, terminated, or waived any of its rights hereunder or any terms, provisions or conditions hereof unless such modification, termination, discharge or waiver is in writing and signed by its duly authorized officers or agents. No such waiver, modification, discharge or termination, unless so expressly stated therein, shall be effective as to any transaction which occurs subsequent to the date of such waiver or modification nor to any continuance of any such waiver or modification.

14. The Bank may assign, transfer and/or deliver to any transferee of any of the Liabilities any or all the Security, and thereafter shall be fully discharged from all responsibility with respect to the Security so assigned, transferred and/or delivered. Such transferee shall be vested with all the powers and rights of the Bank hereunder with respect to such Security, but the Bank shall retain all rights and powers hereby given with respect to any of the Security not so assigned or transferred. No delay on the part of the Bank in exercising any power or right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any power or right hereunder preclude other or further exercise thereof or the exercise of any other power or right. All rights and remedies of the Bank on Liabilities or Security, whether evidenced hereby or by any other instrument or papers, shall be cumulative and may be exercised singularly or concurrently. The undersigned hereby waives presentment, notice of dishonor and protest of all instruments included in or evidencing the Liabilities or the Security and except as specified herein, any and all other notices and demands whatsoever, whether or not relating to such instruments.

15. The undersigned agrees to make available to the Bank and to its accountants, attorneys or other authorized agents or representatives for examination and reproduction all of the undersigned's books of account, records, documents, accountants' reports, and any other written matter relevant to the financial condition of the undersigned and to answer forthwith all the Bank's written or oral inquiries with respect thereto.

16. The undersigned will, at all times now and hereafter, indemnify and save the Bank harmless from and against all loss or damage to it arising in connection with this agreement and against all claims, liabilities, demands, actions or suits, whether groundless or otherwise, and all liabilities, payments, costs, charges and expenses including attorneys' fees incurred by the Bank in respect thereof.

17. If any term, condition or provision of this agreement or of any other agreement or document executed and/or delivered to the Bank is determined to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other term, condition or provision of this agreement.

18. Any demand upon or notice to the undersigned that the Bank may elect to give shall be effective if deposited in the mails or delivered to a telegraph, wireless or radio company addressed to the undersigned at the address shown at the end of this agreement, or if the undersigned has notified the Bank in writing of a change of address, to the undersigned's last address so notified. Demands or notices addressed to the undersigned's address at which the Bank customarily communicates with the undersigned shall also be effective.

19. Unless otherwise agreed, loans, advance or credits heretofore or hereafter obtained from or through the Bank by the undersigned shall be repayable at any office of the Bank in the City of New York upon demand and shall bear interest at the rate of six per cent (6%) per annum. Upon a default in the payment of any Liability, any unpaid balance remaining shall bear interest at the rate of 10% per annum, provided, however, that if such rate be not lawful with respect to the undersigned, such rate shall be 6% per annum.

20. The term "Bank" as used throughout this instrument shall be deemed to include American Bank & Trust Company, its branches wherever located.

The provisions hereof shall apply with like effect to all Security and Liabilities furnished by the undersigned to the Bank or Liabilities in connection with or arising out of transactions entered into for the account of or for the benefit of the undersigned.

21. The undersigned if more than one, shall be jointly and severally liable hereunder and all provisions hereof regarding the Liabilities or Security of the undersigned shall apply to any Liability or any Security of any or all of them. This agreement shall be binding upon the heirs, executors, administrators, assigns or successors of the undersigned; shall constitute a continuing agreement, apply to all future as well as existing transactions, whether or not of the character contemplated at the date of this agreement, and if all transactions between the Bank and the undersigned shall be at any time closed, shall be equally applicable to any new transactions thereafter; shall so continue in force notwithstanding any change in any partnership party hereto, whether such change occurs through death, retirement or otherwise. If the undersigned is a corporation this agreement shall be binding upon any other corporation into or with which the undersigned shall have been merged, consolidated, reorganized or absorbed. If the undersigned is a partnership, the members thereof shall also be individually bound and liable hereunder. Except as otherwise provided all terms used herein which are defined in the Uniform Commercial Code shall have the meanings therein stated. If this agreement shall differ in terms with any other agreement or obligation or Liability of the undersigned to or with the Bank, that which gives the Bank the greater right shall prevail.

23. This agreement shall take effect immediately upon execution by the undersigned, and the execution hereof by the Bank shall not be required as a condition to the effectiveness of this agreement. The provision for execution by the Bank is only for purposes of filing this agreement as a Security agreement under the Uniform Commercial Code, if such execution hereof is required for purposes of such filing.

24. This agreement shall be interpreted, and all the rights and obligations arising hereunder or from any document related thereto shall be determined, in accordance with the laws of the State of New York.

New York, N. Y. JANUARY Ninth, 19 70

(Individuals sign below)

_____

_____

(Address)

_____

_____

(Address)

(Corporations or Partnerships sign below)

F.O. BAROFF COMPANY INC

(Name of Corporation or Partnership)

15 MAIDEN LANE NEW YORK N.Y.

(Address)

By: _____

American Bank & Trust Company

By: _____

Rev 11/68

Exhibit B

(Affidavits of Esther I. Corey and Stock Certificates)

Ammexed to Amended Supplemental Complaint

AFFIDAVIT OF FORGERY Exhibit 27a

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

I, ESTHER I. COREY, being duly sworn, deposes and says:

1. That I reside at 6341 Monitor Street, Pittsburgh, Pennsylvania and have continuously resided at that address for over forty years.

2. That I am the sole and absolute legal and beneficial owner of the following stock certificates:

Certificate Nos.	No. of Shares
AB 96914	81
X 994553	10
U 270737	8

totalling 99 shares of capital stock of AMERICAN TELEPHONE AND TELEGRAPH COMPANY, registered in the name of ESTHER I. COREY, both side photocopies of which are attached hereto and made a part hereof.

3. That I did not sign my name to any of the above certificates.

4. That the signatures to the assignments of each of the said certificates is not mine, was not made or authorized by me, and is a forgery.

5. That I have not sold, assigned, transferred, delivered or hypothecated the said certificates nor in any other way divested myself, or been divested, of the ownership of said certificates.

6. That I have not received any benefit, value or consideration whatsoever from any sale, assignment, transfer, delivery or hypothecation thereof, and have lost and will lose dividends of record since the date of transfer of said certificates.

Esther I. Corey

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

On this 20th day of January, 1972, before me a Notary Public, before me personally came ESTHER I. COREY, who stated the facts in the above Affidavit of Forgery were true, and who signed the above Affidavit of Forgery in my presence.

SWORN to and subscribed
before me this 20th
of January, 1972.

Notarial Seal
Notary Public
Allegheny County, Penna.
My Commission Expires
April 26, 1975

My Commission Expires:

Stock Certificate of American Telephone and Telegraph No. AB96914 for Eighty One shares registered in the name of Esther I, Corey

(Omitted)

Stock Certificate of American Telephone
and Telegraph No. X994553 for Ten Shares
registered in the name of Esther I. Corey

(Omitted)

Stock Certificate of American Telephone and Telegraph No. U270737 registered in the name of Esther I. Corey.

(Omitted)

Page No. 34 Intentionally Omitted

AFFIDAVIT OF FORGERY

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

I, MRS. ESTHER I. COREY, being duly sworn, deposes and says:

1. That I reside at 6341 Monitor Street, Pittsburgh, Pennsylvania and have continuously resided at that address for over forty years.

2. That I am the sole and absolute legal and beneficial owner of the following stock certificates:

Certificate Nos.	No. of Shares
Y 92120	100
Y 0227592	24
Y 0128809	20

totaling 144 shares of common stock of ARMCO STEEL CORPORATION, registered in the name of MRS. ESTHER I. COREY, both side photocopies of which are attached hereto and made a part hereof.

3. That I did not sign my name to any of the above certificates.

4. That the signatures to the assignments of each of the said certificates is not mine, was not made or authorized by me, and is a forgery.

5. That I have not sold, assigned, transferred, delivered or hypothecated the said certificates nor in any other way divested myself, or been divested, of the ownership of said certificates.

6. That I have not received any benefit, value or consideration whatsoever from any sale, assignment, transfer, delivery or hypothecation thereof, and have lost and will lose dividends of record since the date of transfer of said certificates.

Mrs. Esther I. Corey

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

On this 12th day of July, 1972, before me a Notary Public, before me personally came MRS. ESTHER I. COREY, who stated the facts in the above Affidavit of Forgery were true, and who signed the above Affidavit of Forgery in my presence.

Jane L. Gist

SWORN to and subscribed
before me this 12th day
of July, 1972.

My Commission Expires:

JANE L. GIST, Notary Public
Pittsburgh, Allegheny County, Penna.
My Commission Expires
April 23, 1973

Stock Certificate of Armco Steel Corporation No. Y 92120 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of Armco Steel Corporation No. Y 0227592 for 24 shares registered in the name of Esther I. Corey.

(OMITTED)

40a Intentionally Omitted

Stock Certificate of Armco Steel Corporation No. Y 0128809 for 20 Shares registered in the name of Esther I. Corey.

(OMITTED)

43

Exhibit No. 4

AFFIDAVIT OF FORGERY

43a

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

I, MRS. ESTHER I. COREY, being duly sworn, deposes and says:

1. That I reside at 6341 Monitor Street, Pittsburgh, Pennsylvania and have continuously resided at that address for over forty years.

2. That I am the sole and absolute legal and beneficial owner of the following stock certificates:

Certificate Nos.	No. of Shares
411123	100
411124	100

totaling 200 shares of common stock of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, registered in the name of MRS. ESTHER I. COREY, both side photocopies of which are attached hereto and made a part hereof.

3. That I did not sign my name to any of the above certificates.

4. That the signatures to the assignments of each of the said certificates is not mine, was not made or authorized by me, and is a forgery.

5. That I have not sold, assigned, transferred, delivered or hypothecated the said certificates nor in any other way divested myself, or been divested, of the ownership of said certificates.

6. That I have not received any benefit, value or consideration whatsoever from any sale, assignment, transfer, delivery or hypothecation thereof, and have lost and will lose dividends of record since the date of transfer of said certificates.

Mrs. Esther I. Corey

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

On this 12th day of July, 1972, before me a Notary Public, before me personally came MRS. ESTHER I. COREY, who stated the facts in the above Affidavit of Forgery were true, and who signed the above Affidavit of Forgery in my presence.

Jane L. Gift

SWORN to and subscribed
before me this 12th day
of July, 1972.

My Commission Expires:

Jane L. Gift, Notary Public
Pittsburgh, Allegheny County, Penna.
My Commission Expires
April 26, 1975

Stock Certificate of Chesapeake and Ohio Railway Company No. 411123 for 100 shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of Chesapeake and Ohio Railway Company No. 411124 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

48

Exhibit 6

AFFIDAVIT OF FORGERY

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

I, ESTHER I. COREY, being duly sworn, deposes and says:

1. That I reside at 6341 Monitor Street, Pittsburgh, Pennsylvania and have continuously resided at that address for over forty years.

2. That I am the sole and absolute legal and beneficial owner of the following stock certificates:

Certificate Nos.	No. of Shares
N 282784	100
N 282785	100
N 282786	100

totalling 300 shares of common stock of E. I. DU PONT DE NEMOURS & COMPANY, registered in the name of ESTHER I. COREY, both side photocopies of which are attached hereto and made a part hereof.

3. That I did not sign my name to any of the above certificates.

4. That the signatures to the assignments of each of the said certificates is not mine, was not made or authorized by me, and is a forgery.

5. That I have not sold, assigned, transferred, delivered or hypothecated the said certificates nor in any other way divested myself, or been divested, of the ownership of said certificates.

6. That I have not received any benefit, value or consideration whatsoever, from any sale, assignment, transfer, delivery or hypothecation thereof, and have lost and will lose dividends of record since the date of transfer of said certificates.

Esther I. Corey

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

On this 3rd day of January, 1972 before me a Notary Public, before me personally came ESTHER I. COREY, who stated the facts in the above Affidavit of Forgery were true, and who signed the above Affidavit of Forgery in my presence.

SWORN to and subscribed before me this 3rd day of January, 1972.

JANE L. GIPT, Notary Public
Pittsburgh, Allegheny County, Penna.
My Commission Expires
April 20, 1975

My Commission Expires:

Stock Certificate of E. I. DuPont De Nemours & Company No. 282784 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of E. I. DuPont De Nemours & Company No. 282785 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of E. I. DuPont De Nemours & Company No. 282786 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Exhibit F

55

AFFIDAVIT OF FORGERY

COMMONWEALTH OF PENNSYLVANIA]
] Ss:
COUNTY OF ALLEGHENY]

55a

I, ESTHER I. COREY, being duly sworn, deposes and says:

1. That I resided at 6341 Monitor Street, Pittsburgh, Pennsylvania and have continuously resided at that address for over forty years.

2. That I am the sole and absolute legal and beneficial owner of the following stock certificates:

Certificate Nos.	No. of Shares	Certificate Nos.	No. of Shares
P 97 - 006	100	WH 59 - 791	100
P 97 - 007	100	WH 59 - 792	100
P 97 - 008	100	WH 59 - 793	100
P 97 - 009	100	WH 59 - 794	100
WH 59 - 789	100	WH 59 - 795	100
WH 59 - 790	100	WG 174 - 005	35

totalling 1135 shares of common stock of GENERAL MOTORS CORPORATION, registered in the name of ESTHER I. COREY, both side photocopies of which are attached hereto and made a part hereof.

3. That I did not sign my name to any of the above certificates.

4. That the signatures to the assignments of each of the said certificates is not mine, was not made or authorized by me, and is a forgery.

5. That I have not sold, assigned, transferred, delivered or hypothecated the said certificates nor in any other way divested myself, or been divested, of the ownership of said certificates.

6. That I have not received any benefit, value or consideration whatsoever from any sale, assignment, transfer, delivery or hypothecation thereof, and have lost and will lose dividends of record since the date of transfer of said certificates.

Esther I. Corey

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

On this 26th day of January, 1972, before me a Notary Public, before me personally came ESTHER I. COREY, who stated the facts in the above Affidavit of Forgery were true, and who signed the above Affidavit of Forgery in my presence.

SWORN to and subscribed before me this 26th day of January 1972.

JANE L. GIRT, Notary Public
Pittsburgh, Allegheny County, Penna.
My Commission Expires
April 28, 1975

My Commission Expires:

Stock Certificate of General Motors Corporation No. P 97-006 for 100 shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of General Motors Corporation No. P 97-007 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of General Motors Corporation No. P 97-008 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of General Motors Corporation No. P 97-009 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of General Motors Corporation No. WH 59-789 for 100 shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of General Motors Corporation No. WH 59-790 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of General Motors Corporation No. WH 59-791 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of General Motors Corporation No. WH 59-792 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of General Motors Corporation No. WH 59-793 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of General Motors Corporation No. WH 59-794 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of General Motors Corporation No. WH 59-795 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of General Motors Corporation No. WG 174-005 for 35 Shares registered in the name of Esther I. Corey.

(OMITTED)

Exhibit 7 80

AFFIDAVIT OF FORGERY

80a

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

I, MRS. ESTHER I. COREY, being duly sworn, deposes and says:

1. That I reside at 6341 Monitor Street, Pittsburgh, Pennsylvania and have continuously resided at that address for over forty years.

2. That I am the sole and absolute legal and beneficial owner of the following stock certificates:

Certificate Nos.	No. of Shares	Certificate Nos.	No. of Shares
NY H 340914	100	NY H 340917	100
NY H 340915	100	NY H 340918	100
NY H 340916	100	NY H 340919	100

totalling 600 shares of common stock of GENERAL ELECTRIC COMPANY, registered in the name of MRS. ESTHER I. COREY, both side photocopies of which are attached hereto and made a part hereof.

3. That I did not sign my name to any of the above certificates.

4. That the signatures to the assignments of each of the said certificates is not mine, was not made or authorized by me, and is a forgery.

5. That I have not sold, assigned, transferred, delivered or hypothecated the said certificates nor in any other way divested myself, or been divested, of the ownership of said certificates.

6. That I have not received any benefit, value or consideration whatsoever from any sale, assignment, transfer, delivery or hypothecation thereof, and have lost and will lose dividends of record since the date of transfer of said certificates.

Mrs. Esther I. Corey

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

On this [illegible] day of [illegible], 1972, before me a Notary Public, before me personally came MRS. ESTHER I. COREY, who stated the facts in the above Affidavit of Forgery were true, and who signed the above Affidavit of Forgery in my presence.

[illegible] Notary Public
Allegheny County, Penna.
My Commission Expires
April 20, 1975

SWORN to and subscribed
before me this [illegible] day
of [illegible], 1972.

My Commission Expires:

Stock Certificate of General Electric Company No. H 340914 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of General Electric Company No. H 340915 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of General Electric Company No. H 340916 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of General Electric Company No. H 340917 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of General Electric Company No. H 340918 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of General Electric Company No. H 340919 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Exhibit No. 9 93

AFFIDAVIT OF FORGERY

93a

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

I, MRS. ESTHER I. COREY, being duly sworn deposes and says:

1. That I reside at 6341 Monitor Street, Pittsburgh, Pennsylvania and have continuously resided at that address for over forty years.

2. That I am the sole and absolute legal and beneficial owner of the following stock certificates:

Certificate Nos.	No. of Shares
HN 265950	100
HN 265951	100
HN 265952	100
HN 265953	100

totaling 400 shares of common stock of INTERNATIONAL HARVESTER COMPANY, registered in the name of MRS. ESTHER I. COREY, both side photocopies of which are attached hereto and made a part hereof.

3. That I did not sign my name to any of the above certificates.

4. That the signatures to the assignments of each of the said certificates is not mine, was not made or authorized by me, and is a forgery.

5. That I have not sold, assigned, transferred, delivered or hypothecated the said certificates nor in any other way divested myself, or been divested, of the ownership of said certificates.

6. That I have not received any benefit, value or consideration whatsoever, from any sale, assignment, transfer, delivery or hypothecation thereof, and have lost and will lose dividends of record since the date of transfer of said certificates.

Mrs. Esther I. Corey

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

On this 12th day of July, 1972, before me a Notary Public, before me personally came MRS. ESTHER I. COREY, who stated the facts in the above Affidavit of Forgery were true, and who signed the above Affidavit of Forgery in my presence.

Jane L Girt

SWORN to and subscribed
before me this 12th day
of July, 1972.

My Commission Expires:

JANE L. GIRT, Notary Public
Pittsburgh, Allegheny County, Penna.
My Commission Expires
April 25, 1975

Stock Certificate of International Harvester Company No. #265950 for 100 Shares registered in the name of Esther I. Corey.

(Omitted)

Stock Certificate of International Harvester Company No. HN 265951 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of International Harvester Company No. HN 265952 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of International Harvester Company No. HN 265953 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Exhibit 1

102

AFFIDAVIT OF FORGERY

102a

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY

I, MRS. ESTHER I. COREY, being duly sworn, deposes and says:

1. That I reside at 6341 Monitor Street, Pittsburgh, Pennsylvania and have continuously resided at that address for over forty years.

2. That I am the sole and absolute legal and beneficial owner of the following stock certificate:

Certificate No.	No. of Shares
C 187172	100

totalling 100 shares of common stock of S. S. KRESGE COMPANY, registered in the name of MRS. ESTHER I. COREY, both side photocopies of which are attached hereto and made a part hereof.

3. That I did not sign my name to the above certificate.

4. That the signature to the assignment of the said certificate is not mine, was not made or authorized by me, and is a forgery.

5. That I have not sold, assigned, transferred, delivered or hypothecated the said certificate nor in any other way divested myself, or been divested, of the ownership of said certificate.

6. That I have not received any benefit, value or consideration whatsoever from any sale, assignment, transfer, delivery or hypothecation thereof, and have lost and will lose dividends of record since the date of transfer of said certificate.

Mrs. Esther I. Corey

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

On this [illegible] day of [illegible], 1972, before me a Notary Public, before me personally came MRS. ESTHER I. COREY, who stated the facts in the above Affidavit of Forgery were true, and who signed the above Affidavit of Forgery in my presence.

SWORN to and subscribed before me this [illegible] day of [illegible], 1972.

JANE L. GIPT, Notary Public
Pittsburgh, Allegheny County, Penna.
My Commission Expires
April 28, 1973

My Commission Expires:

Stock Certificate of S.S. Kresge Company No. C 187172 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Exhibit No. 105

105a

AFFIDAVIT OF FORGERY

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

I, MRS. ESTHER I. COREY, being duly sworn, deposes and says:

1. That I reside at 6341 Monitor Street, Pittsburgh, Pennsylvania and have continuously resided at that address for over forty years.

2. That I am the sole and absolute legal and beneficial owner of the following stock certificates:

Certificate Nos.	No. of Shares	Kind of Stock
C 48665	100	common
PB O 6114	5	cumulative preferred stock - Series B

totalling 100 shares of common stock and 5 shares of cumulative preferred stock - Series B of MELVILLE SHOE CORPORATION, registered in the name of MRS. ESTHER I. COREY, both side photocopies of which are attached hereto and made a part hereof.

3. That I did not sign my name to any of the above certificates.

4. That the signatures to the assignments of each of the said certificates is not mine, was not made or authorized by me, and is a forgery.

5. That I have not sold, assigned, transferred, delivered or hypothecated the said certificates nor in any other way divested myself, or been divested, of the ownership of said certificates.

6. That I have not received any benefit, value or consideration whatsoever, from any sale, assignment, transfer, delivery or hypothecation thereof, and have lost and will lose dividends of record since the date of transfer of said certificates.

Mrs. Esther I. Corey

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

On this [illegible] day of [illegible], 1972, before me a Notary Public, before me personally came MRS. ESTHER I. COREY, who stated the facts in the above Affidavit of Forgery were true, and who signed the above Affidavit of Forgery in my presence.

JANE L. GIRT, Notary Public
Pittsburgh, Allegheny County, Penna.
My Commission Expires
March 28, 1975

SWORN to and subscribed
before me this [illegible] day
of [illegible], 1972.

My Commission Expires:

Stock Certificate of Melville Shoe Corporation No. C 48665 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

108 Intentionally Omitted

Stock Certificate of Melville Shoe Corporation

No. $\frac{PB}{O}$ 6114 for 5 shares registered in the name of Esther I. Corey.

(OMITTED)

111a Intentionally Omitted

Exhibit No. 13, 112

AFFIDAVIT OF FORGERY

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

112a

I, MRS. ESTHER I. COREY, being duly sworn, deposes and says:

1. That I reside at 6341 Monitor Street, Pittsburgh, Pennsylvania and have continuously resided at that address for over forty years.

2. That I am the sole and absolute legal and beneficial owner of the following stock certificates:

Certificate Nos.	No. of Shares	Certificate Nos.	No. of Shares
K 19094	100	NY H 106072	100
K 19095	100	NY F 452784	62
K 19096	100		
K 19097	100		
K 19098	100		

totalling 662 shares of capital stock of MOBIL OIL CORPORATION, formerly known as Socony Mobil Oil Company, Inc. and Socony-Vacuum Oil Company, Incorporated, registered in the name of MRS. ESTHER I. COREY, both side photocopies of which are attached hereto and made a part hereof.

3. That I did not sign my name to any of the above certificates.

4. That the signatures to the assignments of each of the said certificates is not mine, was not made or authorized by me, and is a forgery.

5. That I have not sold, assigned, transferred, delivered or hypothecated the said certificates nor in any other way divested myself, or been divested, of the ownership of said certificates.

6. That I have not received any benefit, value or consideration whatsoever from any sale, assignment, transfer, delivery or hypothecation thereof, and have lost and will lose dividends of record since the date of transfer of said certificates.

Mrs. Esther I. Corey

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY) Ss:

On this 25th day of January, 1972, before me a Notary Public, before me personally came MRS. ESTHER I. COREY, who stated the facts in the above Affidavit of Forgery were true, and who signed the above Affidavit of Forgery in my presence.

JANE L. GIPP, Notary Public
Pittsburgh, Allegheny County, Penna.
My Commission Expires
April 26, 1975

SWORN to and subscribed before me
this 25th day of January, 1972.

My Commission Expires:

Stock Certificate of Mobil Oil Corporation No. K 19094 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of Mobil Oil Corporation No. 19095 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of Mobil Oil Corporation No. K 19096 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of Mobil Oil Corporation No. 19097 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of Mobil Oil Corporation No. 19098 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of Mobil Oil Corporation

No. $\frac{NY}{H}$ 106072 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of Mobil Oil Corporation

No. $\frac{NY}{H}$ 452784 for 62 Shares registered in the name of Esther I. Corey.

(OMITTED)

Exhibit — P. 1

127

127a

AFFIDAVIT OF FORGERY

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

I, MRS. ESTHER I. COREY, being duly sworn, deposes and says:

1. That I reside at 6341 Monitor Street, Pittsburgh, Pennsylvania and have continuously resided at that address for over forty years.

2. That I am the sole and absolute legal and beneficial owner of the following stock certificate:

Certificate No.	No. of Shares
NH 75416	100

totalling 100 shares of capital stock of NATIONAL STEEL CORPORATION, registered in the name of MRS. ESTHER I COREY, both side photocopies of which are attached hereto and made a part hereof.

3. That I did not sign my name to the above certificate.

4. That the signature to the assignment of the said certificate is not mine, was not made or authorized by me, and is a forgery.

5. That I have not sold, assigned, transferred, delivered or hypothecated the said certificate nor in any other way divested myself, or been divested, of the ownership of said certificate.

6. That I have not received any benefit, value or consideration whatsoever from any sale, assignment, transfer, delivery or hypothecation thereof, and have lost and will lose dividends of record since the date of transfer of said certificate.

Mrs. Esther I Corey

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

On this 5th day of January , 1972, before me a Notary Public, before me personally came MRS. ESTHER I. COREY, who stated the facts in the above Affidavit of Forgery were true, and who signed the above Affidavit of Forgery in my presence.

SWORN to and subscribed before me this 5th day of January ,1972.

JANE L. CIPT, Notary Public
Pittsburgh, Allegheny County, Penna.
My Commission Expires
April 28, 1975

My Commission Expires:

14

Stock Certificate of National Steel Corporation No. NH 75416 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Exhibit T-15

130

AFFIDAVIT OF FORGERY

130a

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

I, ESTHER I. COREY, being duly sworn, deposes and says:

1. That I reside at 6341 Monitor Street, Pittsburgh, Pennsylvania and have continuously resided at that address for over forty years.

2. That I am the sole and absolute legal and beneficial owner of the following stock certificates:

Certificate Nos.	No. of Shares
R 64225	100
R 64226	100
R 64227	100
R 64228	100

totalling 400 shares of capital stock of THE PENNSYLVANIA RAILROAD COMPANY, registered in the name of ESTHER I. COREY, both side photocopies of which are attached hereto and made a part hereof.

3. That I did not sign my name to any of the above certificates.

4. That the signatures to the assignments of each of the said certificates is not mine, was not made or authorized by me, and is a forgery.

5. That I have not sold, assigned, transferred, delivered or hypothecated the said certificates nor in any other way divested myself, or been divested, of the ownership of said certificates.

6. That I have not received any benefit, value or consideration whatsoever from any sale, assignment, transfer, delivery or hypothecation thereof, and have lost and will lose dividends of record since the date of transfer of said certificates.

Esther I. Corey

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

On this [illegible] day of January, 1972, before me a Notary Public, before me personally came ESTHER I. COREY, who stated the facts in the above Affidavit of Forgery were true, and who signed the above Affidavit of Forgery in my presence.

JANE L. GIRT, Notary Public
Pittsburgh, Allegheny County, Penna.
My Commission Expires
April 28, 1975

SWORN to and subscribed before me this [illegible] day of January, 1972.

My Commission Expires:

Stock Certificate of The Pennsylvania Railroad Company No. 64225 for 100 Shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of The Pennsylvania Railroad Company No. 64226 for 100 shares registered in the name of Esther I. Corey.

(OMITTED)

135a Intentionally Omitted

Stock Certificate of The Pennsylvania Railroad Company No. 64227 for 100 shares registered in the name of Esther I. Corey.

(OMITTED)

138a Intentionally Omitted

Stock Certificate of The Pennsylvania Railroad Company No. 64228 for 100 shares registered in the name of Esther I. Corey.

(OMITTED)

141a Intentionally Omitted

Exhibit 14 142

AFFIDAVIT OF FORGERY

142a

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

I, MRS. ESTHER I. COREY, being duly sworn, deposes and says:

1. That I reside at 6341 Monitor Street, Pittsburgh, Pennsylvania and have continuously resided at that address for over forty years.

2. That I am the sole and absolute legal and beneficial owner of the following stock certificates:

Certificate Nos.	No. of Shares	Certificate Nos.	No. of Shares
CO 353187	8	NY C 117282	100
CO 392749	1	NY CO 173230	58

totaling 167 shares of common stock of PHILADELPHIA ELECTRIC COMPANY, registered in the name of MRS. ESTHER I. COREY, both side photocopies of which are attached hereto and made a part hereof.

3. That I did not sign my name to any of the above certificates.

4. That the signatures to the assignments of each of the said certificates is not mine, was not made or authorized by me, and is a forgery.

5. That I have not sold, assigned, transferred, delivered or hypothecated the said certificates nor in any other way divested myself, or been divested, of the ownership of said certificates.

6. That I have not received any benefit, value or consideration whatsoever from any sale, assignment, transfer, delivery or hypothecation thereof, and have lost and will lose dividends of record since the date of transfer of said certificates.

Mrs. Esther I. Corey

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

On this 12th day of July, 1972, before me a Notary Public, before me personally came MRS. ESTHER I. COREY, who stated the facts in the above Affidavit of Forgery were true, and who signed the above Affidavit of Forgery in my presence.

Jane L. Girt

SWORN to and subscribed
before me this 12th day
of July, 1972.

My Commission Expires:

JANE L. GIRT, Notary Public
Pittsburgh, Allegheny County, Penna.
My Commission Expires
April 28, 1975

Stock Certificate of the Philadelphia Electric Company No. CO 353187 for 8 shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of the Philadelphia Electric Company No. CO 392749 for 1 shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of the Philadelphia Electric Company No. $\frac{NY}{C}$ 117282 for 100 shares registered in the name of Esther I. Corey.

(OMITTED)

Stock Certificate of the Philadelphia Electric Company No. $\frac{NY}{C}$ 173230 for 58 shares registered in the name of Esther I. Corey.

(OMITTED)

151a Intentionally Omitted

Exhibit 5 152

AFFIDAVIT OF FORGERY

152a

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

I, MRS. ESTHER I. COREY, being duly sworn, deposes and says:

1. That I reside at 6341 Monitor Street, Pittsburgh, Pennsylvania and have continuously resided at that address for over forty years.

2. That I am the sole and absolute legal and beneficial owner of the following stock certificates:

Certificate No.	No. of Shares
NC 10006	100

totalling 100 shares of common stock of THE PILLSBURY COMPANY, formerly known as Pillsbury Mills, Inc., registered in the name of MRS. ESTHER I. COREY, both side photocopies of which are attached hereto and made a part hereof.

3. That I did not sign my name to the above certificate.

4. That the signature to the assignment of the said certificate is not mine, was not made or authorized by me, and is a forgery.

5. That I have not sold, assigned, transferred, delivered or hypothecated the said certificate nor in any other way divested myself, or been divested, of the ownership of said certificate.

6. That I have not received any benefit, value or consideration whatsoever from any sale, assignment, transfer, delivery or hypothecation thereof, and have lost and will lose dividends of record since the date of transfer of said certificate.

Mrs. Esther I. Corey

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

On this 5th day of January, 1972, before me a Notary Public, before me personally came MRS. ESTHER I. COREY, who stated the facts in the above Affidavit of Forgery were true, and who signed the above Affidavit of Forgery in my presence.

JANE L. GIRT, Notary Public
Pittsburgh, Allegheny County, Penna.
My Commission Expires
March 28, 1975

SWORN to and subscribed
before me this 5th day
of January, 1972.

My Commission Expires:

Stock Certificate of The Pillsbury Company No. NC 10006 for 100 shares registered in the name of Esther I. Corey.

(OMITTED)

Exhibit No. 2 155

AFFIDAVIT OF FORGERY 155a

COMMONWEALTH OF PENNSYLVANIA X
X Ss:
COUNTY OF ALLEGHENY X

I, MRS. ESTHER I. COREY, being duly sworn, deposes and says:

1. That I reside at 6341 Monitor Street, Pittsburgh, Pennsylvania and have continuously resided at that address for over forty years.

2. That I am the sole and absolute legal and beneficial owner of the following stock certificate:

Certificate No.	No. of Shares
N 13814	100

totaling 100 shares of second preferred capital stock of READING COMPANY, registered in the name of MRS. ESTHER I. COREY, both side photocopies of which are attached hereto and made a part hereof.

3. That I did not sign my name to the above certificate.

4. That the signature to the assignment of the said certificate is not mine, was not made or authorized by me, and is a forgery.

5. That I have not sold, assigned, transferred, delivered or hypothecated the said certificate nor in any other way divested myself, or been divested, of the ownership of said certificate.

6. That I have not received any benefit, value or consideration whatsoever from any sale, assignment, transfer, delivery or hypothecation thereof, and have lost and will lose dividends of record since the date of transfer of said certificate.

Mrs. Esther I. Corey

COMMONWEALTH OF PENNSYLVANIA X
X Ss:
COUNTY OF ALLEGHENY X

On this 12th day of July, 1972, before me a Notary Public, before me personally came MRS. ESTHER I. COREY, who stated the facts in the above Affidavit of Forgery were true, and who signed the above Affidavit of Forgery in my presence.

Jane L. Girt

SWORN to and subscribed
before me this 12th day
of July, 1972.

My Commission Expires:

JANE L. GIRT, Notary Public
Pittsburgh, Allegheny County, Penna.
My Commission Expires
April 22, 1973

156a Intentionallly Omitted

Stock Certificate of the Reading Company No. N 13814 for 100 shares registered in the name of Esther I. Corey.

(OMITTED)

159

AFFIDAVIT OF FORGERY

159a

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF ALLEGHENY) Ss:

I, ESTHER I. COREY, being duly sworn, deposes and says:

1. That I reside at 6341 Monitor Street, Pittsburgh, Pennsylvania and have continuously resided at that address for over forty years.

2. That I am the sole and absolute legal and beneficial owner of the following stock certificate:

Certificate No.	No. of Shares
WT 402154 O	100

totalling 100 shares of capital stock of F. W. WOOLWORTH CO., registered in the name of ESTHER I. COREY, both side photocopies of which are attached hereto and made a part hereof.

3. That I did not sign my name to the above certificate.

4. That the signature to the assignment of the said certificate is not mine, was not made or authorized by me, and is a forgery.

5. That I have not sold, assigned, transferred, delivered or hypothecated the said certificate nor in any other way divested myself, or been divested, of the ownership of said certificate.

6. That I have not received any benefit, value or consideration whatsoever from any sale, assignment, transfer, delivery or hypothecation thereof, and have lost and will lose dividends of record since the date of transfer of said certificate.

Esther I. Corey

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

On this 5th day of January, 1972, before me a Notary Public, before me personally came ESTHER I. COREY, who stated the facts in the above Affidavit of Forgery were true, and who signed the above Affidavit of Forgery in my presence.

JANE L. SIPE, Notary Public
Pittsburgh, Allegheny County, Penna.
My Commission Expires
April 28, 1975

SWORN to and subscribed
before me this 5th day
of January, 1972.

My Commission Expires:

19

Stock Certificate of F. W. Woolworth Co. No.

WT
O 402154 for 100 shares registered in the name of Esther I. Corey.

(OMITTED)

163

AFFIDAVIT OF FORGERY ON CHECKS

162a

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

I, ESTHER I. COREY, being duly sworn, deposes and says:

1. That I reside at 6341 Monitor Street, Pittsburgh, Pennsylvania and have continuously resided at that address for over forty years.

2. That the following checks drawn by F. O. Baroff Company, Inc., New York, New York, upon the American Bank and Trust Company, 70 Wall Street, New York, New York, were made payable to the order of "Ester I. (or J.) Corey":

7/20/71 - check # 3943 -	$ 18,074.39
7/20/71 - check # 3945 -	936.86
7/20/71 - check # 3946 -	17,999.85
7/20/71 - check # 3955 -	912.25
7/22/71 - check # 4015 -	11,944.94
7/22/71 - check # 4016 -	11,301.76
7/22/71 - check # 4017 -	1,444.39
8/5/71 - check # 13681 -	42,442.28
8/18/71 - check # 14122 -	87,044.49
8/27/71 - check # 14435 -	78,251.64
	$270,352.85 TOTAL

totaling $270,352.85 in checks, both side photocopies of which are attached hereto and made a part hereof.

3. That these checks were issued in connection with the sale of my unendorsed stock certificates which were stolen. These stock certificates were sold through F. O. Baroff Company, Inc., with my signature forged on the back of the certificates. The signature that was forged on the back of these certificates was guaranteed by F. O. Baroff Company, Inc., New York, New York, and American Bank and Trust Company, New York, New York.

4. That the signature to the assignment of these said checks is not mine, was not made or authorized by me, and is a forgery.

5. That I have not sold, assigned, transferred, delivered or hypothecated the said certificates nor in any other way divested myself, or been divested, of the ownership of said certificates.

6. That I never received the above itemized checks nor authorized anyone to receive said checks for me.

7. That I never signed or endorsed my name on the back of the above itemized checks nor authorized or entitled anyone to receive or endorse said checks.

8. That I have not received any benefit, value or consideration whatsoever from the sale, depositing, collection or paying of the above mentioned checks.

Esther I. Corey

COMMONWEALTH OF PENNSYLVANIA)
) Ss:
COUNTY OF ALLEGHENY)

On this 29th day of February, 1972, before me a Notary Public, before me personally came MRS. ESTHER I. COREY, who stated the facts in the above Affidavit of Forgery were true, and who signed the above Affidavit of Forgery in my presence.

Jane L. Gist

SWORN to and Subscribed
before me this 29th day
of February, 1972.

My Commission Expires:

JANE L. GIST, Notary Public
Pittsburgh, Allegheny County, Penna.
My Commission Expires
April 28, 1975

Check of F. O. Baroff Company, Inc. No. 4015 for $11,944.94 payable to Esther Corey drawn on account at American Bank & Trust Company.

(OMITTED)

Check of F. O. Baroff Company, Inc. No. 3946 for $17,999.85 payable to Ester Corey drawn on account of American Bank & Trust Company.

(OMITTED)

Check of F. O. Baroff Company, Inc. No. 3945 for $936.86 payable to Ester Corey drawn on account of American Bank & Trust Company.

(OMITTED)

Check of F. O. Baroff Company, Inc. No. 3943 for $18,074.39 payable to Ester Corey drawn on account of American Bank & Trust Company.

(OMITTED)

Check of F. O. Baroff Company, Inc. No. 3955 for $912.25 payable to Ester Corey drawn on account of American Bank & Trust Company.

(OMITTED)

Checks of F. O. Baroff Company, Inc. Nos. 14435 and 14122 payable to Ester Corey for $7,825.64 and $87,044.49 drawn on account of American Bank & Trust Company.

(OMITTED)

Checks of F. O. Baroff Company, Inc. Nos. 13681 and 401 payable to Ester Corey for $42,444.28 and $1,444.39 drawn on account of American Bank & Trust Company.

(OMITTED)

Exhibit C

(List of Securities)

Annexed to Amended Supplemental Complaint

Check of F.O. Baroff Company, Inc.
No. 4016 payable to Elser Corey for
$11,301.76 drawn on Account of American
Bank and Trust Company

(Omitted)

F. O. BAROFF, INC.

SHARES SOLD OF ESTHER I. COREY'S

STOCK CERTIFICATES

Name of Company	Number of Shares Sold	Certificate Numbers	No. of Shares	Date Registered	How Registered	Date Sold
Amer. Tele. & Telegraph Co.	81	AB 96914	81	3-18-55	Esther I. Corey	7-23-71
	10	X 994553	10	5-12-58	Esther I. Corey	7-23-71
	8	U 270737	8	10-17-56	Esther I. Corey	7-23-71
Total	99		99			
Armco Steel Corp.	100	Y 92120	100	4-20-55	Mrs. Esther I. Corey	7-23-71
	24	Y 0227592	24	1-29-57	Mrs. Esther I. Corey	7-23-71
	20	Y 0128809	20	4-20-55	Mrs. Esther I. Corey	7-23-71
Total	144		144			
The Chesapeake & Ohio Railway Co.	100	411123	100	3-18-55	Mrs. Esther I. Corey	7-9-71
	100	411124	100	3-18-55	Mrs. Esther I. Corey	7-9-71
Total	200		200			
E. I. DuPont De Nemours & Co.	100	N 282784	100	3-30-55	Esther I. Corey	7-12-71
	100	N 282785	100	3-30-55	Esther I. Corey	7-12-71
	100	N 282786	100	3-30-55	Esther I. Corey	7-12-71
Total	300		300			

Exhibit C

172a

F. O. BAROFF, INC.

STOCK CERTIFICATES

Name of Company	Number of Shares Sold	Certificate Numbers	Number of Shares	Date Registered	How Registered	Date Sold
General Electric Co.	100	NY H 340914	100	3-25-55	Mrs. Esther I. Corey	7-6-71
	100	NY H 340915	100	3-25-55	Mrs. Esther I. Corey	7-6-71
	100	NY H 340916	100	3-25-55	Mrs. Esther I. Corey	7-6-71
	100	NY H 340917	100	3-25-55	Mrs. Esther I. Corey	7-2-71
	100	NY H 340918	100	3-25-55	Mrs. Esther I. Corey	7-2-71
	100	H 340919	100	3-25-55	Mrs. Esther I. Corey	7-2-71
Total	600		600			
General Motors Co.	100	P 97-006	100	11-7-55	Esther I. Corey	7-29-71
	100	P 97-007	100	11-7-55	Esther I. Corey	7-29-71
	100	P 97-008	100	11-7-55	Esther I. Corey	7-29-71
	100	P 97-009	100	11-7-55	Esther I. Corey	7-29-71
	100	WH59-789	100	3-31-55	Esther I. Corey	7-29-71
	100	WH59-790	100	3-31-55	Esther I. Corey	7-29-71
	100	WH59-791	100	3-31-55	Esther I. Corey	7-29-71
	100	WH59-792	100	3-31-55	Esther I. Corey	7-29-71
	100	WH59-793	100	3-31-55	Esther I. Corey	7-29-71
	100	WH59-794	100	3-31-55	Esther I. Corey	7-29-71
	100	WH59-795	100	3-31-55	Esther I. Corey	7-29-71
	35	WG175-005	35	4-5-55	Esther I. Corey	7-29-71
Total	1135		1135			

F. O. BAROFF, INC.

STOCK CERTIFICATES

Name of Company	Number of Shares Sold	Certificate Numbers	No. of Shares	Date Registered	How Registered	Date Sold
International Harvester Co.	100	HN 265950	100	3-18-55	Mrs. Esther I. Corey	7-9-71
	100	HN 265951	100	3-18-55	Mrs. Esther I. Corey	7-9-71
	100	HN 265952	100	3-18-55	Mrs. Esther I. Corey	7-9-71
	100	HN 265953	100	3-18-55	Mrs. Esther I. Corey	7-9-71
Total	400		400			
S. S. Kresge Co.	100	C 187172	100	3-18-55	Mrs. Esther I. Corey	7-23-71
Total	100		100			
Melville Shoe Corp.	100	C 48665	100	3-18-55	Mrs. Esther I. Corey	7-23-71
	5	PB O 6114	5	6-14-56	Mrs. Esther I. Corey	7-23-71
Total	105		105			
Mobil Oil Corp.	100	K 19094	100	3-18-55	Mrs. Esther I. Corey	7-28-71
	100	K 19095	100	3-18-55	Mrs. Esther I. Corey	7-28-71
	100	K 19096	100	3-18-55	Mrs. Esther I. Corey	7-28-71
	100	K 19097	100	3-18-55	Mrs. Esther I. Corey	7-28-71
	100	K 19098	100	3-18-55	Mrs. Esther I. Corey	7-28-71
	100	NY H 106072	100	6-18-56	Mrs. Esther I. Corey	7-28-71
	62	NY F 452784	62	2-27-57	Mrs. Esther I. Corey	7-28-71
Total	662		662			

F. O. BAROFF, INC.

STOCK CERTIFICATES

Name of Company	Number of Shares Sold	Certificate Numbers	No. of Shares	Date Registered	How Registered	Date Sold
National Steel Co.	100	NH 75416	100	3-17-55	Mrs. Esther I. Corey	7-26-71
Total	100		100			
The Pennsylvania Railroad Co.	100	R 64225	100	3-29-55	Esther I. Corey	7-6-71
	100	R 64225	100	3-29-55	Esther I. Corey	7-6-71
	100	R 64227	100	3-29-55	Esther I. Corey	7-7-71
	100	R 64228	100	3-29-55	Esther I. Corey	7-7-71
Total	400		400			
Philadelphia Electric Co.	8	CO 353187	8	6-26-57	Mrs. Esther I. Corey	7-23-71
	1	CO 392749	1	7-15-59	Esther I. Corey	7-23-71
	58	NY CO 173230	58	3-18-55	Mrs. Esther I. Corey	7-23-71
	100	NY C 117282	100	3-18-55	Mrs. Esther I. Corey	7-23-71
Total	167		167			
The Pillsbury Co.	100	NC 10006	100	3-18-55	Mrs. Esther I. Corey	7-28-71
Total	100		100			
Reading Co.	100	N 13814	100	3-18-55	Mrs. Esther I. Corey	7-26-71
Total	100		100			

F. O. BAROFF, INC.

Stock Certificates

Name of Company	Number of Shares Sold	Certificate Numbers	No. of Shares	Date Registered	How Registered	Date Sold
F. W. Woolworth Co.	100	WT O 402154	100	3-17-55	Esther I. Corey	7-28-71
Total	100		100			

Exhibits D through I.

(Letters Received by American Bank and Trust Company from or on Behalf Certain Cooporations, etc., setting Forth Claims)

Annexed to Amended Supplemental Complaint

GENERAL MOTORS CORPORATION

177a

STOCK TRANSFER DEPARTMENT

General Motors Building · 767 Fifth Avenue, New York, New York 10022

November 3, 1971

486-3861
Macafty

American Bank and Trust Company
70 Wall Street
New York, N. Y. 10005

Attention: Mr. William McCafferty, Trust Officer

Gentlemen:

On or about August 4, 1971 certificates P97-006/09 totaling 400 shares, WH59789/93 totaling 700 shares and WG17-005 for 35 shares of General Motors Corporation common stock registered in the name of Esther I. Corey were submitted to us for transfer to the name of Barco, nominee of F. O. Baroff Company, Inc. Photostatic copies of the face and reverse side of these certificates are enclosed.

The certificates purportedly bore the signature of the registered holder, which signatures were guaranteed by your firm. Of course, the transfer was effected in reliance on your firm's signature guarantee.

The attorney for the registered holder has now advised us that her signature appearing thereon is a forgery.

Please be advised that, inasmuch as your firm guaranteed the signature of the registered holder, we will look to you to save us harmless from any loss experienced by the Corporation as a result of the subject transfer.

A report of this claim is being directed to Mr. R. M. Cone, Director Insurance & Pension Section, General Motors Corporation, 3044 West Grand Blvd., Detroit, Michigan 48202. Any further correspondence in this matter should be addressed to him.

Yours very truly,

T. O. Macdonald, Jr.

T. O. Macdonald, Jr.
Transfer Agent

PDM
encls.

---Immediately - FBI agent---
---to appear & interrogate---
Total Value of Securities Involved

MORGAN GUARANTY TRUST COMPANY
OF NEW YORK
30 WEST BROADWAY, NEW YORK, N. Y. 10015

178a

New York August 10, 1972

STOCK TRANSFER

IN REPLYING PLEASE REFER TO 10130

Mr. Herbert M. Mardon
Vice President and Secretary
American Bank & Trust Company
70 Wall Street
New York, New York 10005

Dear Mr. Mardon:

We enclose a copy of a letter from Mr. Herbert G. Labbie, Attorney at Law, dated July 31, 1972, together with five Affidavits sworn to by his client, Esther I. Corey. We also enclose copies of the various cancelled stock certificates enumerated in his letter and Affidavits for your examination.

In view of the circumstances related to in the Affidavits and that the signature of Esther I. Corey on the certificates in question were guaranteed by American Bank & Trust Company, we hereby formally demand from you the following stock in negotiable form bearing the required transfer tax, as well as the total amount of dividends paid on these shares :

COMPANY	CLASS	SHARES	DIVIDENDS	DATE CANCELLED
Armco Steel Corporation	Common	144	$ 100.00	8-2-7
The Chesapeake and Ohio Railway Company	Common	200	500.00	8-23-7 9-1-7
Philadelphia Electric Company	Common	167	273.88	8-2-7
International Harvester Company	Common	400	560.00	8-3-7
Reading Company	Second Preferred	100	-	8-8-7

The aforementioned dividends include only those disbursed as of this date.

Very truly yours,

J. Woodall
Assistant Secretary

cc:
cc: Mr. A. M. Arnold
Secretary and Treasurer

BEST COPY AVAILABLE

INSURANCE COMPANY OF NORTH AMERICA
110 William St., New York, N. Y. 10038 • Telephone (212) 233-5010

September 28, 1972

American Bank & Trust Company
70 Wall Street
New York, N.Y. 10038

Re: File 980 B 492657
(99 shs. American Telephone
& Telegraph Co. R/H/O Esther I.
Corey)
American Telephone & Telegraph Co.

Gentlemen:

We are attaching hereto copy of correspondence dated September 22, 1972, together with enclosures received from counsel for the Trustee of F. O. Baroff Co., Inc. which will be self-explanatory, in connection with the above.

Under the circumstances, we hereby demand that your firm take the necessary steps to forward to this Company on behalf of the American Telephone & Telegraph Company, 99 shares of American Telephone & Telegraph Company in negotiable form, plus any and all stock splits and dividends declared since the date of transfer.

Very truly yours,

John M. Killeen

JMK:hw

INSURANCE COMPANY OF NORTH AMERICA
110 William St., New York, N. Y. 10038 • Telephone (212) 233-3010

180a

CERTIFIED MAIL

September 20, 1972

F. O. Baroff Co., Inc.
15 Maiden Lane
New York, N.Y. 10005

AND

American Bank & Trust Company
70 Wall Street
New York, N.Y. 10038

Re: File 980 & 492657
(99 shs. American Telephone
& Telegraph Co. R/H/O
Esther I. Corey)
American Telephone & Telegraph Co.

Gentlemen:

Please be advised that this Company writes a certain Securities Forgery Bond in favor of the American Telephone & Telegraph Company.

As Surety, we have been informed by our assured that during July of 1971 99 shares of the capital stock of American Telephone & Telegraph Company, Registered in the Name of Esther I. Corey, represented by Certificate Nos. AB 96914, X 9945 and U 279737 were transferred out of her name bearing the alleged forged endorsement of her signature. We are attaching hereto photocopies of the front and reverse sides of the securities in question, wherein you will note that Mrs. Corey's signature was guaranteed by your firm. We are also attaching duly executed Affidavit of Forgery by Mrs. Corey with respect to the previously mentioned Certificates.

In view of the above, on behalf of the American Telephone & Telegraph Company and under both your firms' signature guarantee, we hereby make Demand upon F. O. Baroff Co., Inc. and American Bank & Trust Company for 99 shares of American Telephone & Telegraph Company plus any and all stock splits and dividends declared since the date of transfer.

Cont.

We will appreciate your promptly acknowledging receipt of this correspondence and enclosures and also informing us as to your intentions in this matter.

Very truly yours,

John M. Killeen

JMK:hw

IPL #06200

February 5, 1973

American Bank & Trust Company
70 Wall Street
New York, N.Y.

Gentlemen:

Re: Esther I. Corey
100 shares F.W. Woolworth Co.
Certificate No. WT/O 402154

We have been informed by our Securities Replacement Department that Esther I. Corey has made claim against Citibank as transfer agent on the captioned stock certificate alleging that they were transferred over forged endorsements. We understand that similar claims were forwarded to American Bank & Trust Company on its signature guarantee.

Inasmuch as any recovery against Citibank would result in a claim over against American Bank & Trust Company, we would appreciate your advice as to the current status of Mrs. Corey's claim.

We are available to discuss this matter with you at your convenience and may be reached by telephone on 559-6022.

Very truly yours,

ARTHUR G. LLOYD
Assistant Comptroller

INSURANCE COMPANY OF NORTH AMERICA
110 William St., New York, N. Y. 10038 • Telephone (212) 233-5010

183a

May 31, 1973

Leo Guzik, Esq.
Guzik & Boukstein, Esqs.
37 Wall Street
New York, N.Y. 10005

Re: File 980 B 490255
(Alleged forged endorsement of
the signature of Esther L. Corey
on Ctf. Nos. NYH 340914/29 for
100 shs. ea. of General Electric Co.)
General Electric Company

Dear Mr. Guzik:

Please be advised that the General Electric Company was served with a Writ of Summons in Trespass & Assumpsit at their Pittsburgh Office on May 17, 1973, in connection with the above.

We are attaching hereto a copy of the subject Writ and wish to advise on behalf of the General Electric Company that we are looking to American Bank & Trust Company to hold it harmless from and against any and all loss, charge, damage or expense inclusive of attorney's fees that it might possibly sustain arising out of this action.

Very truly yours,

John M. Killeen

JMK:hw

Att.

LAW OFFICES
SHARLOCK & REPCHECK
2977 U. S. STEEL BLDG.
PITTSBURGH, PA. 15219

AREA CODE 412
391-6171

JOHN J. REPCHECK
GARY F. SHARLOCK

October 10, 1973

The American Bank & Trust Company
70 Wall Street
New York, New York 10005

In Re: Esther I. Corey v. The Chesapeake & Ohio Railway Co. et al
Court of Common Pleas, Allegheny County Pennsylvania
No. 835 July Term, 1973

Gentlemen:

Please be advised that we represent The Chesapeake and Ohio Railway Company in connection with an action pending in The Court of Common Pleas of Allegheny County Pennsylvania. Esther I. Corey was the owner of 100 shares of Chesapeake and Ohio Railway Company common stock, Certificate No. 411123 and the owner of 100 shares of common stock, Certificate No. 411124. I am enclosing copies of the certificates for your reference.

Stocks in question were apparently stolen from Esther I. Corey and subsequently, her signature was forged. New certificates were issued to other persons.

The American Bank & Trust Company guaranteed the signature of Esther I. Corey. Accordingly, The Chesapeake and Ohio Railway Company calls upon The American Bank & Trust Company to defend The Chesapeake and Ohio Railway Company in the pending action and to indemnify and save harmless The Chesapeake and Ohio Railway Company in connection with the claim of Esther I. Corey and to pay all costs, expenses and legal fees incurred by The Chesapeake and Ohio Railway Company in connection with the defense of the above matter.

We would be glad to cooperate with you in any manner in connection with the defense of this matter and look forward to your early response to this letter.

Very truly yours,

Gary F. Sharlock

GFS:ms
Encl.
cc: T. L. Samuel
E. C. Williams
R. Gady

Pages 186a to 198a Omitted

Stock Certificates of Chesapeake and Ohio Railway Company annexed to letter of October 10, 1973 reproduced at pages 184a - 185a supra

(Omitted)

Suite 1900 Law and Finance Building
Pittsburgh, Pa. 15219

AREA CODE (412) 261-6600

GEORGE Y. MEYER
1891 - 1970

KIM DAMIACH
GEORGE I. BUCKLER
DONALD W. GEDENEK
CARL A. ECK
J. MICHAEL DOHERTY
HARRY JOHN ZIMMER
THOMAS A. LAZAROFF
CARL F. MEYER
RICHARD J. MILLS
KENNETH B. ROTH
ANDREW J. SANYAS, III
JOHN C. KUNZ
JOHN E. HALL
RAYMOND H. CONAWAY
FRED C. TRENOR, II
WM. A. PILTHAGALLO

REFERENCE NO. GM-73

ATTENTION: CARL A. ECK

November 28, 1973

David C. Birdoff, Esquire
Reavis and McGrath
1 Chase Manhattan Place
New York, New York 10005

Re: Esther I. Corey
Vs: American Telephone & Telegraph Company, et al.
No. 835 July Term, 1973 - Common Pleas Court - Allegheny County, Pa.

Dear Mr. Birdoff:

The undersigned represents the interests of General Motors Corporation and its insurance carrier, the Seaboard Surety Company, 90 William Street, New York, New York, relative to a lawsuit which has been filed here in Pittsburgh, Pa. in the Common Pleas Court of Allegheny County at No. 835 July Term, 1973. A copy of the Praecipe commencing this lawsuit on behalf of Esther I. Corey by her attorney, Herbert Labbie, is enclosed for your information and file.

My information indicates that this lawsuit has been filed as a result of an alleged forgery of the signature of the stockholder, Esther I. Corey, on certain General Motors Corporation stock certificates representing 1,135 shares of General Motors Corporation stock. It is also represented that with respect to those stock certificates, that the brokerage firm of F. O. Baroff Company, Inc., New York, New York guaranteed the signatures of the stockholder and that your bank, in turn, also guaranteed the signatures of the stockholder.

It is further represented that the signature of Esther I. Corey was, in fact, forged and that the stock certificates were negotiated and sold without her consent or knowledge and without her receiving any benefit of the sale of same.

It further appears from a review of photostats of the stock certificates that the signature of Esther I. Corey was, in fact, forged and that, in fact, your bank as well as the brokerage firm referred to above did guarantee the signatures.

If these facts are correct, then it would appear that under applicable law and regulations, that your bank has complete liability for the replacement value of said certificates and stock as well as liability for all dividends due and payable since the forgery and negotiation of the stock certificates.

We have been further advised that you and your law firm represent the interests of the American Bank And Trust Company of New York, New York and accordingly, we are addressing this letter to you advising that any and all legal fees which are incurred on behalf of my clients as a result of the facts set forth above, if true and correct, would be and will be the obligation of your client. The purpose of this letter, therefore, is to make a demand upon your client to pay any and all legal expenses, including legal fees, costs of investigation, and any other costs necessarily incident to this lawsuit which are incurred by my clients, General Motors Corporation and the Seaboard Surety Company.

I have been advised by the attorney for the plaintiff, Mr. Labbie, that efforts are being made, without the formal filing of a Complaint here in Pittsburgh and without the necessity of full litigation, to resolve and settle the claim of Esther I. Corey and I certainly encourage that this

be accomplished so as to minimize any expenses or obligations which might otherwise be engendered on behalf of my clients and become the responsibility of your client.

I would appreciate an acknowledgment of this letter and an indication as to what is the status of the settlement aspects of this lawsuit and Mrs. Corey's claim.

Further, we would like to advise you and your client and put you on notice that if, in fact, full litigation is undertaken here in Pittsburgh, that we may consider at the appropriate time tendering the defense of this lawsuit on behalf of General Motors Corporation to your client.

We would appreciate a response to this letter and thank you for your cooperation.

Yours truly,

CARL A. ECK

CAE:jo

Enclosure

cc. Seaboard Surety Company

cc. General Motors Corporation

REGISTERED MAIL, RETURN RECEIPT REQUESTED.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

ESTHER I. COREY,

Plaintiff,

vs.

AMERICAN TELEPHONE & TELEGRAPH COMPANY, a corporation; ARMCO STEEL CORPORATION, a corporation; THE CHESAPEAKE & OHIO RAILWAY COMPANY, a corporation; E. I. DuPONT De NEMOURS & COMPANY, a corporation; GENERAL ELECTRIC COMPANY, a corporation; GENERAL MOTORS CORPORATION, a corporation; INTERNATIONAL HARVESTER COMPANY, a corporation; S. S. KRESGE COMPANY, a corporation; MELVILLE SHOE CORPORATION, a corporation; MOBIL OIL CORPORATION, a corporation; NATIONAL STEEL COMPANY, a corporation; THE PENNSYLVANIA RAILROAD COMPANY, a corporation; PHILADELPHIA ELECTRIC COMPANY, a corporation; THE PILLSBURY COMPANY, a corporation; READING COMPANY, a corporation; F. W. WOOLWORTH COMPANY, a corporation

335 JUL 1973

194a

DARRAGH, BUCKLER, BEBENEK & ECK
ATTORNEYS AT LAW
Suite 1900 Law and Finance Building
Pittsburgh, Pa. 15219

DEC 31 1973

C3581

David C. Birdoff, Esquire
Reavis and McGrath
1 Chase Manhattan Place
New York, New York 10005

REGISTERED MAIL, RETURN RECEIPT REQUESTED.

3

MORGAN GUARANTY TRUST COMPANY
OF NEW YORK
30 WEST BROADWAY, NEW YORK, N. Y. 10015

New York December 11, 1973

STOCK TRANSFER

IN REPLYING PLEASE REFER TO 10T20

Mr. Herbert E. Mardes
Vice President and Secretary
American Bank & Trust Company
70 Wall Street
New York, New York 10005

Dear Mr. Mardes:

RE: ESTHER I. CORNY

As you will recall, on August 10, 1972, we made a formal demand upon your organization for various issues of stock per copy of our letter enclosed.

To date, we understand that this matter has not been resolved, as we were contacted by Mr. Herbert Labbie, attorney, representing Esther I. Corey.

We cannot understand why you have not responded to our demand, as American Bank and Trust clearly guaranteed the signature.

Again, we are formally demanding from you the following stock in negotiable form bearing the required transfer tax as well as the total amount of dividends distributed to date.

Company	Class	Shares	Date Cancelled
Armco Steel Corporation	Common	144	8/2/71
Chesapeake & Ohio Railway Co.	Common	200	8/23/71 9/1/71
Philadelphia Electric Co.	Common	167	8/2/71
International Harvester	Common	400	8/3/71
Reading Co.	Second Pfd.	100	8/2/71

May we hear from you shortly on this matter, as you realize if we are required to pay Esther I. Corey, we will move to enforce our rights under your guaranty of signature.

Yours very truly,

R. Mack

Authorized Signature

Encl.
md

EGLER, McGREGOR AND REINSTADTLER
ATTORNEYS AT LAW
2100 LAWYERS BUILDING
428 FORBES AVENUE
PITTSBURGH, PENNSYLVANIA 15219

AREA CODE 412
TELEPHONE 281-0616

FREDERICK N. EGLER
JAMES A. McGREGOR, JR.
THOMAS J. REINSTADTLER, JR.
ANDREW L. WEIL
JAMES G. LEONARD
LOUIS ARISTANDIS
ROBERT R. GARNETT
THEODORE C. CREAULT
SEBASTIAN C. PUGLIESE, JR.
ROBERT J. PEARY
JANICE I. GAMBINO

February 22, 1974

American Bank & Trust Company
79 Pine Street
New York, New York

RE: Esther I. Corey v.
S. S. Kresge Company

Gentlemen:

I am writing to you as the attorney for S. S. Kresge Company in the matter of Esther I. Corey.

Mrs. Corey has filed suit in the Court of Common Pleas of Allegheny County against my client and others to recover damages arising from the illegal transfer of her stock certificates out of her name.

The present claim against my client is for the return of 300 shares of stock of S. S. Kresge Company. The original 100 share certificate of S. S. Kresge Company stock, which was illegally transferred, has subsequently been split three for one. (Certificate #C107172)

The American Bank & Trust Company affixed its "SIGNATURE GUARANTEED" stamp beneath the forged signature of Esther I. Corey (and the signature guarantee of F. O. Baroff & Company, Inc.). Under the rules governing stock transfer, your guarantee covered the signature both of Esther I. Corey and F. O. Baroff & Company, Inc. Your "SIGNATURE GUARANTEED" was a sine qua non of transfer without which the transfer agent would not have made the transfer.

Consequently, S. S. Kresge Company requests that you honor your signature guarantee.

If you do not honor your signature guarantee, and this matter must be litigated, then this is to advise you that S. S.

Kresge Company will look to you for reimbursement of all sums which it is required to pay arising out of the claims of Esther I. Corey, including all costs of defense and attorney's fees.

I would appreciate your prompt response so that I may advise my client as to what steps it should take to protect its interest in this matter.

Yours very truly,

EGLER, McGREGOR & REINSTADTLER

BY: James A. McGregor, Jr.

JAMcG:jls

Exhibit J

(Broker's Blanked Bond (No. S. 623572)

Annexed to Amended Supplemental Complaint

1551 M. 2 13 199

110 Wm 21 - 1 r 7 C.

INSURANCE COMPANY OF NORTH AMERICA, PHILADELPHIA, PENNSYLVANIA

A Stock Insurance Company, herein called the Underwriter

199a

F. O. Baroff Company, Inc.
15 Maiden Lane
New York, New York 10038

L

BROKERS' BLANKET BOND
Form No. 14

The Underwriter, a Pennsylvania corporation with its principal place of business at 1600 Arch Street in the City and County of Philadelphia, Commonwealth of Pennsylvania, in consideration of an agreed premium, and subject to the Declarations made a part hereof, The General Agreements, Conditions and Limitations, and other terms of this bond, agrees to indemnify and hold harmless the Insured to an amount not exceeding the Amount of Bond stated in Item 3(a) of the Declarations, subject to the Sub-Limits stated in Item 3(b) of the Declarations, from and against any losses, as hereinafter set forth, sustained by the Insured at any time but discovered after noon of the date hereof and prior to the termination or cancellation of this bond as an entirety, or by mutual agreement.

Wherever used in this bond Property shall be deemed to mean:

Abstracts of Title
Acceptances
Bank Notes
Bills of Exchange
Bills of Lading
Bonds
Bracelets
Bullion
Calls
Certificates
Checks
Coin
Conditional Sales Contracts
Coupons
Currency
Debentures
Deeds
Drafts
Evidences of Debts
Federal Reserve Notes
Gems
Insurance Policies, Assignments of Insurance Policies
Jewelry
Money
Money Orders
Mortgages Upon Real Estate and/or Upon Chattels and Upon Interests Therein, and Assignments of Such Mortgages and Instruments
Necklaces
Notes
Postage and Revenue Stamps, Cancelled or Uncancelled
Precious Metals of All Kinds and in any Form and Articles Made Therefrom
Precious and Semi-Precious Stones
Puts
Receipts
Rights
Scrip
Securities
Spreads
Straddles
Transfers
Travelers Checks
Travelers Letters of Credit
U. S. Saving Stamps
Warrants
Warehouse Receipts
Watches
Withdrawal Orders

and other valuable papers and documents and all other instruments similar to or in the nature of the foregoing (but excluding all electronic data processing records) in which the Insured has an interest or in which the Insured acquired or should have acquired an interest by reason of a predecessor's declared financial condition at the time of the Insured's consolidation or merger with, or purchase of the principal assets of, such predecessor or which are held by the Insured for any purpose or in any capacity and whether so held gratuitously or not and whether or not the Insured is liable therefor.

Wherever used in this bond, Employee and Employees shall be deemed to mean, respectively, one or more of the Insured's officers, clerks and other employees employed by the Insured during the currency of this bond, and wherever located and one or more of the officers, clerks and other employees of any predecessor of the Insured whose principal assets are acquired by the Insured by consolidation or merger with, or purchase of assets of, such predecessor and Guest Students pursuing their studies or duties in any of the Insured's offices, and attorneys who are retained by the Insured to perform legal services for the Insured and employees of such attorneys, while performing such services.

The losses covered by this bond are as follows:

DISHONESTY

(A) Loss through any dishonest or fraudulent act of any of the Employees, committed anywhere and whether committed directly or by collusion with others, including loss of Property through any such act of any of the Employees.

ON PREMISES

(B) Loss of Property through robbery, burglary, common-law or statutory larceny, theft or other fraudulent means, hold-up, misplacement, mysterious unexplainable disappearance, abstraction or removal from the possession, custody or control of the Insured, damage thereto or destruction thereof, whether effected with or without violence or with or without negligence on the part of any of the Employees, while the Property is (or is supposed to be) lodged or deposited within any offices or premises located anywhere, except in any of the Insured's offices excluded by The Declarations or in the mail or with a carrier for hire, other than an armored motor vehicle company, for the purpose of transportation.

Loss of furnishings, fixtures, stationery, supplies or equipment in any of the Insured's offices covered under this bond, or any loss through damage to any such office and to the furnishings, fixtures, stationery, supplies or equipment therein, in either case caused by larceny or theft in, or by burglary, robbery or hold-up of, such office, or attempt thereat, or by vandalism or malicious mischief, provided that the Insured is the owner of such offices, furnishings, fixtures, stationery, supplies or equipment or is liable for such loss or damage, —always excepting, however, all loss or damage through fire.

IN TRANSIT

(C) Loss of Property (occurring with or without negligence) through robbery, common-law or statutory larceny, embezzlement, misappropriation, theft, hold-up, misplacement, mysterious unexplainable disappearance, being lost or otherwise made away with, damage thereto or destruction thereof, while the Property is in transit anywhere in the custody of any person acting as messenger or in the custody of any armored motor vehicle company, except while in the mail or while being transported by express or as freight after receipt of the Property by a carrier for hire other than an armored motor vehicle company, such transit to begin immediately upon receipt of such Property by the transporting person or company, and to end immediately upon delivery thereof at destination.

Printed in U.S.A.

FORGERY OR ALTERATION

(D) Loss through forgery as to a signature, or alteration of, on or in any bills of exchange, checks, drafts, acceptances, certificates of deposit or other written orders or directions to pay sums certain in money, due bills, money orders, warrants, orders upon public treasuries, letters of credit, written instructions or advices which are directed to the Insured and authorize or acknowledge the transfer, payment, delivery or receipt of any funds or Property and bear the forged signature of, or have been altered without the consent of any customer, stockbroker, banker or other financial institution, withdrawal orders or receipts for the withdrawal of funds or Property, or receipts or certificates of deposit for Property and bearing the name of the Insured as issuer, excluding, however, coupon and serial notes, bonds, scrip, debentures and obligations of a similar nature, whether registered or unregistered, and coupons attached thereto or detached therefrom.

Any check or draft (a) made payable to a fictitious payee and endorsed in the name of such fictitious payee or (b) procured in a face to face transaction with the maker or drawer thereof or with one acting as agent of such maker or drawer by anyone impersonating another and made or drawn payable to the one so impersonated and endorsed by any one other than the one impersonated, shall be deemed to be forged as to such endorsement.

Mechanically reproduced facsimile signatures are treated the same as handwritten signatures.

SECURITIES FORGERY

(E) Loss sustained by the Insured, including loss sustained by reason of liability imposed on the Insured by law or by the constitution, rules or regulations of any Stock Exchange of which the Insured is a member or which would have been imposed on the Insured by the constitution, rules or regulations of any Stock Exchange, if the Insured had been a member thereof, through having, in good faith and in the ordinary course of business, whether for its own account or for the account of others, in any representative, fiduciary, agency or any other capacity, either gratuitously or otherwise, purchased or otherwise acquired, accepted or received, or sold or delivered, or given any value, extended any credit or assumed any liability, on the faith of, or otherwise acted upon any securities or other documents of title which prove to have been raised or otherwise altered, or lost or stolen, or on which the signature of any person signing in any capacity proves to have been counterfeited or forged, or through having, in good faith and in the ordinary course of business, guaranteed in writing or witnessed any signatures, whether for valuable consideration or not and whether or not such guaranteeing or witnessing is ultra vires the Insured, upon any transfers, assignments, bills of sale, powers of attorney, guarantees, endorsements or other documents upon or in connection with any securities or other documents of title and which pass or purport to pass title to such securities or other documents of title: EXCLUDING, however, in any event, any loss as specified in Insuring Clause (D).

Mechanically reproduced facsimile signatures are treated the same as handwritten signatures.

COUNTERFEIT CURRENCY INSURING CLAUSE

This bond shall also cover any loss through the receipt by the Insured, in good faith, of any counterfeited or altered paper currencies or coin of the United States of America issued or purporting to have been issued by the United States of America or issued pursuant to a United States of America Statute for use as currency.

INDEMNITY AGAINST COURT COSTS AND ATTORNEYS' FEES

The Underwriter agrees to indemnify the Insured against court costs and reasonable attorneys' fees incurred or paid by the Insured in the defense, whether or not successful, of any claim or suit brought against the Insured subsequent to the effective date hereof, with respect to which the Insured establishes that the act or acts which occurred would entitle the Insured to recovery under this bond (apart from this Insuring Clause) if any loss resulted therefrom. The Insured shall tender the defense of any such claim or suit to the Underwriter, and the Underwriter may, if it so elects, select attorneys for the defense of such claim or suit. Such indemnity shall be a part of and not in addition to the amount of this bond, and payment made on any claim under this bond, including any payment for court costs and attorneys' fees, shall not exceed (a) the amount stated in Item 3(a) of the Declarations or (b) the Sub-Limit stated in Item 3(b) of the Declarations, as applicable to the Insuring Clause or part thereof under which the loss would be recoverable, whichever is less.

ADDITIONAL OFFICES

If the Insured shall, while this bond is in force, establish any additional office or offices, such office or offices shall be automatically covered hereunder from the dates of their establishment, respectively. No notice to the Underwriter of an increase during any premium period in the number of offices or in the number of Employees at any of the offices covered hereunder need be given and no additional premium need be paid for the remainder of such premium period, unless such increase shall result from the merger or combination with the Insured of another concern.

JOINT INSURED

If more than one corporation, co-partnership or person or any combination of them be included as Insured in the bond:

1. The first named Insured shall act for itself and for each and all of the Insured for all the purposes of the bond.
2. Knowledge possessed or discovery made by any Insured or by any partner or officer thereof shall for all the purposes of the bond constitute knowledge or discovery by all the Insured.
3. If, prior to the termination of the bond in its entirety, the bond is terminated as to any Insured, there shall be no liability for any loss sustained by such Insured unless discovered before the time such termination as to such Insured becomes effective.
4. The liability of the Underwriter for loss or losses sustained by any or all of the Insured shall not exceed the amount for which the Underwriter would be liable had all such loss or losses been sustained by any one of the Insured. Payment by the Underwriter to the first named Insured of loss sustained by any Insured shall fully release the Underwriter on account of such loss.
5. If the first named Insured ceases for any reason to be covered under the bond, then the insured next named shall thereafter be considered as the first named Insured for all the purposes of the bond.

The foregoing agreement is subject to the following ... ns and limitations:

Section 1. This bond does not cover:

(a) Any loss directly or indirectly effected by means of forgery, except when covered under Insuring Clause (A), (D), or (E), or the Counterfeit Currency Insuring Clause.

(b) Any loss due to riot or civil commotion outside the United States of America and Canada, or any loss due to military, naval or usurped power, war or insurrection unless such loss occurs in transit in the circumstances recited in Insuring Clause (C), and unless, when such transit was initiated, there was no knowledge of such riot, civil commotion, military, naval or usurped power, war or insurrection on the part of any person acting for the Insured in initiating such transit; or any loss due to hurricane, cyclone, tornado, earthquake, volcanic eruption or similar disturbance of nature; or any loss in time of peace or war, directly or indirectly caused by or resulting from any weapon of war employing nuclear fission or fusion or radio-activity.

(c) Any loss resulting directly or indirectly from the act or acts of any person who is a member of the Board of Directors of the Insured or a member of any equivalent body by whatsoever name known unless such person is also an Employee or an elected official of the Insured in some other capacity, nor, in any event, any loss resulting directly or indirectly from the act or acts of any person while acting in the capacity of a member of such Board or equivalent body; or any loss resulting directly or indirectly from any dishonest, fraudulent or criminal act of any partner of the Insured.

(d) Any loss the result of any loan made or credit extended by the Insured or by any of its Partners, Directors or Employees, whether authorized or unauthorized, or from the complete or partial non-payment thereof or default thereon, whether such loan or credit was procured in good faith or through trick, artifice or fraud, except when covered under Insuring Clause (A), (D) or (E) hereof.

(e) (1) Any loss resulting directly or indirectly from trading, including all transactions involving the purchase, sale or exchange of securities, with or without the knowledge of the Insured, in the name of the Insured or otherwise, whether or not represented by any indebtedness or balance shown to be due the Insured on any customer's account, actual or fictitious, and notwithstanding any act or omission on the part of any Employee in connection with any account relating to such trading, indebtedness, or balance.

If any instrument covered under Insuring Clause (D) or (E) is involved in any trading loss, then this subsection (e) shall not be construed as excluding liability under Insuring Clause (D) or (E) on account of such instrument for the amount recoverable thereunder, but in no event for an amount in excess of the amount applicable under this bond for the payment of such loss.

(2) (Applicable only if an amount is shown in Item 3(b)(3) of the Declarations) Any loss resulting directly or indirectly from trading, including all transactions involving the purchase, sale or exchange of securities, with or without the knowledge of the Insured, in the name of the Insured or otherwise, whether or not represented by any indebtedness or balance shown to be due the Insured on any customer's account, actual or fictitious, except when covered under Insuring Clause (A), (D) or (E).

If any instrument covered under Insuring Clause (D) or (E) is involved in any trading loss, then this subsection (e) shall not be construed as excluding liability under Insuring Clause (D) or (E) on account of such instrument for the amount recoverable thereunder, but in no event for an amount in excess of the amount applicable under this bond for the payment of such loss.

(f) Any loss of Property contained in customers' safe deposit boxes unless such loss be sustained through any dishonest or fraudulent act of an identifiable Employee under such circumstances as shall make the Insured legally liable therefor.

(g) Any loss of Property or any loss of privileges through the misplacement or loss of securities as set forth in Insuring Clause (C) while such Property or securities are in transit in the custody of any armored motor vehicle company, unless such loss shall be in excess of the amount recovered or received by the Insured under (a) the Insured's contract with said armored motor vehicle company, (b) insurance carried by said armored motor vehicle company for the benefit of users of its service, and (c) all other insurance and indemnity in force in whatsoever form carried by or for the benefit of users of said armored motor vehicle company's service, and then this bond shall cover only such excess.

(h) Any loss resulting from any violation by the Insured, or by any Employee, Partner or Director of the Insured, of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, as heretofore or hereinafter amended, or any other federal, state or municipal statute regulating securities transactions or any rule or regulation made pursuant to any of the said statutes unless it is established by the Insured that the act or acts which caused the said loss involved fraudulent or dishonest conduct which would have caused a loss to the Insured in similar amount in the absence of such statutes, rules or regulations.

(i) Any loss of securities ... each security with respect to which a claim is submitted is identified in ... proof of loss by certificate or bond number.

WARRANTY

Section 2. No statement made by or on behalf of the Insured, whether contained in the application or otherwise, shall be deemed to be a warranty of anything except that it is true to the best of the knowledge and belief of the person making the statement.

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NOTICE OF LOSS

Section 3. The Insured shall give to the Underwriter written notice of any loss hereunder as soon as possible after the Insured shall learn of such loss, and within ninety days after learning of such loss shall file with the Underwriter an itemized proof of claim duly sworn to. The Underwriter shall have thirty (30) days after notice and proof of loss within which to investigate the claim, but where the loss is clear and undisputed, settlement shall be made within forty-eight hours; and this shall apply notwithstanding the loss is made up wholly or in part of securities of which duplicates may be obtained.

VALUATION OF PROPERTY

Securities

Section 4. The value of any securities, for the loss of which claim shall be made under this bond, shall be determined by the cost of an equivalent amount of securities of the same issue purchased by or at the instance of the Underwriter; provided, however, that if, prior to such purchase by or at the instance of the Underwriter, the Insured shall be compelled, by the demands of a third party or by market rules, to assume the cost of an equivalent amount of securities of the same issue, and shall notify the Underwriter, in writing, of such compulsion, such cost shall be taken as the value of such securities. The amount of the Insured's claim on account of any such loss shall be deemed to be the cost of such securities as herein determined. In case of a loss of subscription, conversion, redemption or deposit privileges the amount of such loss shall be the value of such privileges immediately preceding the expiration thereof. If any securities for the loss of which claim shall be made under this bond cannot be replaced or have no quoted market value, or if such subscription, conversion, redemption or deposit privileges have no quoted market value, their value shall be determined by agreement or arbitration. Any loss sustained under this bond of money, currency or funds of any country shall be paid in the United States of America dollar equivalent of the money, currency or funds of such country. Any other loss sustained at any of the Insured's offices covered under this bond and payable in money shall be paid in the United States of America dollar equivalent of the money, currency or funds of the country in which such office is located. Any foreign exchange loss for which claim shall be made under this bond shall be determined by the average rate of exchange on the day preceding the discovery of such loss.

In the event that any securities shall become the subject of claim under the bond, and the value of such securities as determined by the cost of an equivalent amount of securities of the same issue at the time of loss shall exceed the bond amount stated in the opening paragraph of the bond, then in lieu of computing the amount of the Insured's claim as provided in the first paragraph of this section, the Underwriter shall:

(a) Determine that portion of the loss which must be reserved immediately for the purchase of securities, not to exceed the bond amount, and

(b) Utilize the remainder of the bond amount, if any, for the payment of premiums for the purchase of Lost Instrument Bonds or Undertakings as required for the replacement of any or all duplicatable securities forming a part of the Insured's loss, including that portion of the duplicatable securities which represent loss in excess of the bond amount.

PROVIDED, HOWEVER, that the Underwriter may, in lieu of paying any or all of the premiums specified in sub-section (b) above, execute the necessary Lost Instrument Bonds or Undertakings at its regularly filed rates upon execution by the Insured of the usual application and indemnity agreement specifically agreeing to indemnify and hold the Underwriter harmless on that portion of any ultimate loss on such securities which shall exceed the amount remaining after deducting from the bond amount the sum determined in (a) above and the sum of any premiums actually paid in accordance with sub-section (b) above.

The Underwriter's liability under this bond on all Lost Instrument Bonds or Undertakings executed or purchased as above shall not exceed the amount of this bond less the amounts determined in sub-sections (a) and (b) for the purchase of securities and the payment of premiums for Lost Instrument Bonds or Undertakings. The Underwriter's liability under such Lost Instrument Bonds or Undertakings in excess of the aforesaid amount shall be strictly one of suretyship only and the Insured shall be liable as principal for all such excess liability.

Books of Accounts and Other Records

In case of any loss of or damage to Property consisting of books of accounts or other records used by the Insured in the conduct of its business, the Underwriter shall be liable under this bond only if such books or records are actually reproduced and then for not more than the cost of blank books, blank pages or other materials plus the cost of labor for the actual transcription or copying of data which shall have been furnished by the Insured in order to reproduce such books and other records.

Property Other Than Securities

In case of any loss of or damage to any Property other than securities, books of accounts or other records as aforesaid or damage to the Insured's offices covered under this bond, or loss of or damage to the furnishings, fixtures, stationery, supplies and equipment therein, the Underwriter shall not be liable for more than the actual cash value of such Property, or of such furnishings, fixtures, stationery, supplies and equipment, or for more than the actual cost of repairing such Property or offices, furnishings, fixtures, stationery, supplies and equipment, or of replacing same with property or material of like quality and value. The Underwriter may, at its election, pay such actual cash value, or make such repairs or replacements. If the Underwriter and the Insured cannot agree upon such cash value or such cost of repairs or replacements, such cash value or such cost shall be determined by arbitration.

LEGAL PROCEEDINGS

Section 5. No action or proceeding shall be brought under this bond in regard to any loss, unless begun within twenty-four months after the Insured shall learn of such loss, except that any action or proceeding to recover hereunder on account of any judgment against the Insured in any suit mentioned in the Indemnity Against Court Costs and Attorneys' Fees Clause, or to recover attorneys' fees paid in any such suit, shall be begun within twenty-four months from the date upon which the judgment in such suit shall become final. In case such limitation be void under the law of the place governing the construction hereof, then any such action or proceeding shall be begun within the shortest period of limitation permitted by such law.

DISTRIBUTION OF SALVAGE

Section 6. In case of recovery, whether made by the Insured or the Underwriter, on account of any loss coming within the coverage of this bond, from any source other than insurance, suretyship, indemnity or reinsurance, the net amount of such recovery, after deducting the actual cost and expense of making same, shall be applied, if such recovery be made before payment by the Underwriter, as follows: if such loss be in excess of the amount of this bond plus the amount of the insurance of any co-insurers of the Underwriter and plus the amount of any deductible (i. e., the amount over which this bond is written as excess, or that part of any loss or losses which must be deducted before insurance under this bond applies) and of any underlying insurance or suretyship, then such net recovery shall be applied to such excess in reduction of the loss of the Insured and the balance, if any, shall be applied to that part of such loss for which the Underwriter and its co-insurers, if any, are liable; or if there be no such excess loss, then such net recovery shall be applied to that part of such loss for which the Underwriter and its co-insurers, if any, are liable. If such recovery be made after payment by the Underwriter, then such net recovery shall be applied as follows: if there be any such excess loss, then such net recovery shall be applied to such excess, and the balance, if any, shall be applied to the reimbursement of the Underwriter and its co-insurers, if any, proportionately; or if there be no such excess loss, such net recovery shall be applied to the reimbursement of the Underwriter and its co-insurers, if any, proportionately. The Insured shall execute all necessary papers to secure to the Underwriter the rights herein provided for.

NON-REDUCTION OF LIABILITY

Section 7. The amount of indemnity specified in the Declarations shall not be reduced by the payment of any loss or losses, but shall be the Underwriter's maximum liability for any loss or losses arising from: (a) any one act, not implicating an Employee, of robbery, burglary, hold-up or attempt thereat, or (b) any one act or omission of any person (whether or not an Employee) resulting in misplacement of, damage to, or destruction of, Property, or (c) acts or omissions, other than those as described above, in which any person (whether or not an Employee) is concerned or implicated, or (d) any other single casualty or event. In no event shall the said maximum liability be multiplied or otherwise increased by the number of years this bond shall continue in force or the number of premiums paid or payable thereon.

Limit of Liability Under This Bond and Prior Insurance

With respect to loss or losses set forth in subsection (c) of the first paragraph of this section which are recoverable or recovered in whole or in part under any other bonds or policies issued by the Underwriter to the Insured or to any predecessor in interest of the Insured and terminated or cancelled or allowed to expire and in which the period for discovery has not expired at the time any such loss or losses thereunder are discovered, the total liability of the Underwriter under this bond and under such other bonds or policies shall not exceed, in the aggregate, the amount carried hereunder on such loss or losses or the amount available to the Insured under such other bonds or policies, as limited by the terms and conditions thereof, for any such loss or losses, if the latter amount be the larger.

If the coverage of the a[illegible]nd supersedes in whole or in part the coverage of any other bond or policy [illegible] insurance issued by an Insurer other than the Underwriter and terminated, cancelled or allowed to expire, the Underwriter, with respect to any loss sustained prior to such termination, cancellation or expiration and discovered within the period permitted under such other bond or policy for the discovery of loss thereunder, shall be liable under the attached bond only for that part of such loss or losses covered by the attached bond as is in excess of the amount recoverable or recovered on account of such loss or losses under such other bond or policy, anything to the contrary in such other bond or policy notwithstanding.

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OTHER INSURANCE OR INDEMNITY

Section 8. If the Insured carries or holds any other insurance or indemnity covering any loss or losses covered by this bond, the Underwriter shall be liable hereunder only for that part of such loss or losses which is in excess of the amount recoverable or recovered from such other insurance or indemnity. In no event shall the Underwriter be liable for more than the amount of the coverage of this bond applicable to such loss or losses; subject, nevertheless, to Section 7 of this bond.

TERMINATION OR CANCELLATION

Section 9. This bond shall be deemed terminated or cancelled as an entirety—(a) thirty days after the receipt by the Insured of a written notice from the Underwriter of its desire to terminate or cancel this bond, or (b) immediately upon the receipt by the Underwriter of a written request from the Insured to terminate or cancel this bond, or (c) immediately upon the taking over of the Insured by a receiver or other liquidator or by State or Federal officials, or (d) immediately upon the taking over of the Insured by another institution. The Underwriter shall, on request, refund to the Insured the unearned premium, computed pro rata, if this bond be terminated or cancelled or reduced by notice from, or at the instance of, the Underwriter, or if terminated or cancelled as provided in subdivision (c) or (d) of this paragraph. The Underwriter shall refund to the Insured the unearned premium computed at short rates if this bond be terminated or cancelled or reduced by notice from, or at the instance of, the Insured.

This bond shall be deemed terminated or cancelled as to any Employee—(a) as soon as the Insured shall learn of any dishonest or fraudulent act on the part of such Employee, without prejudice to the loss of any Property then in transit in the custody of such Employee, or (b) fifteen days after the receipt by the Insured of a written notice from the Underwriter of its desire to terminate or cancel this bond as to such Employee.

RIGHTS AFTER TERMINATION OR CANCELLATION

Section 10. At any time prior to the termination or cancellation of this bond as an entirety, whether by the Insured or the Underwriter, the Insured may give to the Underwriter notice that it desires under this bond an additional period of twelve months within which to discover loss sustained by the Insured prior to the effective date of such termination or cancellation and shall pay an additional premium therefor. If this bond is terminated or cancelled as an entirety by reason of the taking over of the Insured by a receiver or other liquidator or by State or Federal officials, such receiver or other liquidator or State or Federal officials shall have the rights of the Insured and be subject to the same limitations as set forth in this paragraph provided that such rights are exercised by notice to the Underwriter within thirty days after such Insured is taken over by such receiver or other liquidator or State or Federal officials and provided, further, that such Insured has not previously exercised such rights. Upon receipt of such notice from the Insured or from such receiver or other liquidator or State or Federal officials, the Underwriter shall give its written consent thereto; provided, however, that such additional period of time shall terminate forthwith on the effective date of any other insurance

(1) obtained by the Insured or its successors in business, other than such receiver or other liquidator or State or Federal officials, replacing in whole or in part the insurance afforded by this bond, whether or not such other insurance provides coverage for loss sustained prior to its effective date, or

(2) obtained by such receiver, liquidator or State or Federal officials replacing in whole or in part the insurance afforded by this bond but only if such other insurance provides coverage to some extent for loss sustained prior to its effective date, and

in the event that such additional period of time is terminated, as herein provided, the Underwriter shall refund any unearned premium.

Section 11. By acceptance of this Bond the Insured agrees that it embodies all agreements existing between the Insured and the Underwriter or any of its agents relating to this insurance.

IN WITNESS WHEREOF, the INSURANCE COMPANY OF NORTH AMERICA has caused this Bond to be signed by its president and secretary-treasurer at Philadelphia, Pennsylvania, and countersigned on the Declarations page by a duly authorized agent of the Underwriter.

Geoffrey Stengel

GEOFFREY STENGEL, Secretary-Treasurer

H Richard Heilman

H. RICHARD HEILMAN, President

CIGNA

INSURANCE COMPANY OF NORTH AMERICA, PHILADELPHIA, PENNSYLVANIA

BROKERS' BLANKET BOND
Form No. 14

DECLARATIONS 293a

$ 623572

1. NAMED INSURED (Herein called Insured) Principal Address

F. O. Baroff Company, Inc.
15 Maiden Lane
New York, New York 10038

2. Bond Period: from noon on July (Month) 9 (Day) 1970 (Year)
to noon on the effective date of the cancellation or termination of this Bond, standard time at the Principal Address as to each of said dates.

3. Table of Limits of Liability

(a) Amount of Bond ..... $ 100,000.

(b) Sub-Limits

The liability of the Underwriter as stated in (a) above is further limited to the amount specified below with respect to the following coverages. The amounts specified below shall be a part of and not in addition to the Amount of Bond, and Section 7 of the bond shall be subject to the amounts specified below.

(1) Misplacement or mysterious unexplainable disappearance, under Insuring Clause (B) ..... $ 100,000.

(2) Insuring Clause (E), Securities Forgery ..... $ 100,000.

(3) Trading Loss, under Insuring Clause (A). (When an amount is shown for this Sub-Limit (3), Section 1 (e)(1) is deleted and Section 1 (e)(2) is substituted therefor) ..... $ 100,000.

4. Offices Covered—All of the Insured's offices in existence at the time this bond becomes effective are covered under this bond except the offices located as follows:

No Exceptions

5. Riders—The liability of the Underwriter is subject to the terms of the following riders attached hereto:

6. The Insured by the acceptance of this bond gives notice to the Underwriter terminating or canceling prior bond(s) or policy(ies) No. , such termination or cancellation to be effective as of the time this Bond becomes effective.

7. Notification—The Underwriter will mark its records to indicate that P-B-W Stockexchange located at 120 South 17th Street, Phila. Pa. 19103 is to be notified promptly concerning the cancellation or termination of the bond as an entirety or as to any Employee covered thereunder whether such cancellation or termination be effected by notice from the Insured or the Underwriter and will use its best efforts to so notify said Exchange but failure to so notify said Exchange shall not impair or delay the effectiveness of any such cancellation or termination.

"NO CHANGE OR MODIFICATION OF OR IN THE AGREEMENTS, LIMITATIONS OR CONDITIONS OF THE ATTACHED BOND SHALL BE EFFECTIVE UNLESS SUCH CHANGE OR MODIFICATION IS IN WRITING AND SIGNED BY THE PARTY OR PARTIES AGAINST WHOM ENFORCEMENT IS SOUGHT."

Countersigned By _____
Authorized Agent

FB-256 Printed in U.S.A.

INSURANCE COMPANY OF NORTH AMERICA, PHILADELPHIA, PENNSYLVANIA

204a

Deductible Rider
To Provide Deductible Amount:
(1) Under All Clauses Except D or E
(2) Under Clause D on "Aggregate" Basis
(3) Under Clause E on "Aggregate" Basis

Named Insured F. O. BAROFF COMPANY, INC.

Effective date of rider: From noon on August 24, 1971

To be attached to and form part of Blanket Bond, Form No. 14, No. S-62 35 72

It is agreed that:

1. The Underwriter shall not be liable under any of the Insuring Clauses of the attached bond, other than the Clause concerning Court Costs and Attorneys' Fees, and other than Insuring Clause (D) or (E) if coverage under either or both of such Insuring Clauses is afforded under the attached bond, on account of loss as specified, respectively, in subdivisions (a), (b), (c) and (d) of Section 7 of the attached bond, unless the amount of such loss, after deducting the net amount of all reimbursement and/or recovery obtained or made by the Insured, other than from any bond or policy of insurance issued by a surety or insurance company and covering such loss, or by the Underwriter on account thereof prior to payment by the Underwriter of such loss shall exceed the sum of FIVE THOUSAND ---------- Dollars ($5,000.00) and then for such excess only, but in no event for more than the Limit of Liability stated in Item 3 of the Declarations of the attached bond or the amount of the applicable coverage of such bond if such amount be smaller. The Clause concerning Court Costs and Attorneys' Fees is subject to the deductible provisions contained therein.

2. The Underwriter shall not be liable under Insuring Clause (D) of the attached bond on account of loss caused by acts of any one person or acts in which such person is concerned or implicated, unless the amount of such loss or the aggregate of such losses after deducting all recoveries on account thereof made prior to payment by the Underwriter on account of such loss or losses shall be in excess of FIVE THOUSAND ---------- Dollars ($ 5,000.00) and then for such excess only, but in no event for more than the Limit of Liability stated in Item 3 of the Declarations of the attached bond.

3. The Underwriter shall not be liable under Insuring Clause (E) of the attached bond on account of loss caused by acts of any one person or acts in which such person is concerned or implicated, unless the amount of such loss or the aggregate of such losses after deducting all recoveries on account thereof made prior to payment by the Underwriter on account of such loss shall be in excess of FIVE THOUSAND ------- ---------- Dollars ($ 5,000.00) and then for such excess only, but in no event for more than the Limit of Liability stated in Item 3 of the Declarations of the attached bond, or the amount of coverage applicable to Insuring Clause (E) if such amount be smaller.

4. If "Nil", "Not Applicable" or equivalent is inserted, in lieu of an amount, in any of the preceding paragraphs, such paragraph and any other reference thereto in this rider shall be deemed to be deleted from this rider.

(continued on second page)

5. The attached bond is hereby amended by cancelling and terminating prior Deductible Rider(s) attached to said bond and more fully described as follows:

Deductible Amount	Applicable to (Insuring Clause(s))	Dated Effective
---	-----	----

6. This rider applies to loss sustained at any time but discovered after noon on the effective date hereof.

7. The attached bond shall be subject to all its agreements, limitations and conditions except as herein expressly modified.

Accepted: F. O. DAROFF COMPANY, INC.

By: Carl S Gadsden
Authorized Signature

Countersigned by Warren R. Dodson
Authorized Agent

664-TBF

Exhibit K

(Letter dated February 13, 1974 of Postal Inspector S.N. McKusick)

Annexed to Amended Supplemental Complaint

POST OFFICE DEPARTMENT
POSTAL INSPECTOR

296a

INSPECTOR
dt

CASE NO. 203-10958-P
District Court
Docket No. 73 CR 265

Chicago, Illinois 60607

February 13, 1974

Mr. Herbert G. Labbie
605 Manor Building
564 Forbes Avenue
Pittsburgh, Pennsylvania 15219

Dear Mr. Labbie:

Please be advised that in the Mail Fraud prosecution involving the Esther I. Corey stock certificates the following has resulted:

Defendant Donald A. Geel was sentenced on January 4, 1974 to five years' probation, with the first ninety days in prison.

Defendant William J. Lysen was sentenced on January 15, 1974 to seven years in prison. Lysen filed notice of intent to appeal, however, his bond was revoked and he was taken into custody pending appeal.

Any documents subpoenaed or otherwise obtained by the Government must be retained by the Court, pending the outcome of Lysen's appeal. They will be returned on completion of that court action.

On behalf of the U. S. Attorney's office and the Postal Inspection Service, I would like to thank you for your cooperation in this case. Should you have any further questions concerning this matter, do not hesitate to contact me.

Sincerely,

S. N. McKusick
Postal Inspector

Exhibit K

Exhibit L.

(Letter dated April 2, 1974 from Insuramce Company of North America to Herbert G. Labbie)

Annexed to Amended Supplemental Complaint

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EABT re Corey

INSURANCE COMPANY OF NORTH AMERICA

Life Insurance Company of North America • Pacific Employers Group

625 Walnut Street, P.O. Box 1616, Philadelphia, Pa. 19105 WAlnut 5-8330

April 2, 1974 File No. 990 B 61 07 05

Herbert G. Labbie, Esquire
605 Manor Building
564 Forbes Avenue
Pittsburgh, Penna. 15219

RE: F. O. Baroff Company, Inc.
Ester I. Corey

Dear Mr. Labbie:

Thank you for your letter of March 27, 1974, with enclosed photo copy of letter of February 13, 1974, from Mr. McKusick, Postal Inspector.

As requested, we confirm that INA will pay the $100,000 bond limit under the Baroff's Broker's Blanket Bond in the Ester I. Corey matter if the Trustee for Baroff shall claim said amount as indemnity for a loss sustained in the matter and, of course, discharges INA from further liability under the bond.

Very truly yours,

John J. Mangan, CPCU
Assistant Manager - Bonding Claims

keg

, being duly sworn, states:

I am

I have read the within

and know it is true to my knowledge, except as to those matters stated therein to be on information and belief and as to those matters, I believe it to be true.

Sworn to before me this day

of , 19 .

New York, N. Y.

, 19 .

AFFIRMATION OF SERVICE OF MAIL

, an attorney

admitted to practice in the Courts of the State of New York, affirms under the penalties of perjury that on , 19 , I served a copy of the within

upon

by depositing the same in an enclosed post-paid properly addressed envelope in an official United States Postal Service depository at One Chase Manhattan Plaza, New York, N. Y. 10005, directed to said attorney(s) at the address above stated.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

AFFIDAVIT OF SERVICE BY MAIL

, being duly sworn, states:

I am not a party to this action. On , 19 , I served a copy of the within

upon

by depositing the same in an enclosed post-paid properly addressed envelope in an official United States Postal Service depository at One Chase Manhattan Plaza, New York, N. Y. 10005, directed to said attorney(s) at the address above stated. I am not a party to this action.

Sworn to before me this day

of , 19 .

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

AFFIDAVIT OF PERSONAL SERVICE

, being duly sworn states

I am not a party to the action. On , 19 , I served a copy of the within

upon

the

by delivering to and leaving personally with the aforenamed at the address appearing above a true copy thereof.

Sworn to before me this day

of , 19 .

INDEX NO. 72 Civ. 60

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re
F. O. BAROFF COMPANY, INC.,
Debtor,
AMERICAN BANK & TRUST COMPANY,
Plaintiff,
-against-
EDWARD S. DAVIS, Trustee for the Liquidation of the Business of F.O. Baroff Company, Inc.,
Defendant.

AMENDED SUPPLEMENTAL COMPLAINT

REAVIS & McGRATH

Attorneys for Plaintiff

One Chase Manhattan Plaza
New York, N. Y. 10005
(212) 269-7600

CERTIFICATION OF COPY

an attorney admitted to practice in the Courts of the State of New York, certifies that I have compared the within copy of

with the original and have found it to be a true and complete copy.

New York, N. Y.

, 19 .

COPY RECEIVED

OCT 7 1974

HUGHES HUBBARD & REED

Defendant's Notice of Motion for Summary Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of F. O. BAROFF CO., INC., Debtor.	72 Civ. 60 NOTICE OF MOTION
AMERICAN BANK & TRUST CO., Plaintiff, -against- EDWARD S. DAVIS, Trustee for the Liquidation of the Business of F. O. BAROFF CO., INC., Defendant.	

S I R S :

PLEASE TAKE NOTICE that upon the pleadings filed herein, the annexed Memorandum submitted on behalf of Edward S. Davis, Trustee (the "Trustee"), and the annexed affidavit of J. Bruce Ferguson, the Trustee hereby moves this Court for summary judgment pursuant to Rule 56 of the Rules of Civil Procedure for the United States District Courts on the ground that there is no genuine issue as to any material fact and the Trustee is entitled to judgment as a matter of law; and for such other, further and different relief as to the Court may seem just and proper.

Dated: New York, New York
October 25, 1974

Yours, etc.

HUGHES HUBBARD & REED

By James W. Fiddess
A Member of the Firm
Attorneys for the Trustee
One Wall Street
New York, New York 10005

10/25/74

Affidavit of J. Bruce Ferguson

In Support of Defendant's Notice for Summary Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of F. O. BAROFF CO., INC., Debtor.	:	72 Civ. 60 AFFIDAVIT
AMERICAN BANK & TRUST CO., Plaintiff, -against EDWARD S. DAVIS, Trustee for the Liquidation of the Business of F. O. BAROFF CO., INC., Defendant.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

J. BRUCE FERGUSON, being duly sworn, deposes and says that:

1. I am an attorney associated with the firm of Hughes Hubbard & Reed, attorneys for the Trustee for the liquidation of F. O. Baroff Co., Inc. and I am fully familiar with the facts hereinafter stated.

2. This Affidavit is submitted in support of the motion by defendant Edward S. Davis, Trustee ("the Trustee") for summary judgment pursuant to Fed. R. Civ. Proc. 56 on the grounds that (a) there is no genuine issue as to any material fact and (b) the Trustee is entitled to judgment as a matter of law.

3. For the purposes of this action, the facts are as stated in the Bank's complaint dated June 17, 1974, as amended on October 7, 1974, with the exception of paragraph 20; and in addition

4. The Trustee has released to the Bank the remaining funds held in the escrow account at the Irving Trust Company in the amount of $79,321.62; and

5. In December 1971, the Debtor paid Esther Corey $5,128.54 with respect to accrued dividends on securities stolen from Corey and an additional $9,240.87 to Loeb Rhoades & Co. for the loss it sustained on its sale for the Debtor of certain of the stolen securities which it was required to return to Esther Corey; and

6. The Trustee has filed a claim under the Broker's Blanket Bond carried by the Debtor and has received payment of $100,000; and

7. There is no genuine issue to be tried as to any material fact.

Dated: New York, New York
October 25, 1974

J. Bruce Ferguson

Sworn to before me this
25th day of October, 1974

Notary Public

GERALDINE MESA
Notary Public, State of New York
No. 31-7909440
Qualified in New York County
Commission Expires March 30, 1976

Affidavit of Robert Migaty

In Opposition to Defendant's Motion for Summary Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DOCKETED

In the Matter	
-of-	
F. O. BAROFF COMPANY, INC.,	
Debtor.	
AMERICAN BANK & TRUST COMPANY,	72 Civ. 60
Plaintiff,	
-against-	
EDWARD S. DAVIS, Trustee,	
Defendant.	

STATE OF NEW YORK)
)SS.:
COUNTY OF NEW YORK)

ROBERT MIGATZ, being duly sworn deposes and says:

1. I am an executive vice president of American Bank & Trust Company ("American"), plaintiff in the above captioned matter, and submit this affidavit in opposition to the Trustee's motion for summary judgment and in support of American's motion for summary judgment. I have personal knowledge of the facts hereinafter set forth.

12/13/74

2. American commenced this proceeding to compel the Trustee to file a proof of claim on the Brokers Blanket Bond of F.O. Baroff Co., Inc. ("Baroff"). Since the institution of this proceeding, American has been advised that on July 10 and September 18, 1974 the Trustee did, in fact, file proofs of claim under the Bond and has received the sum of $100,000 thereunder. American claims that by virtue of Baroff's indebtedness to it, it is entitled to the insurance proceeds.

3. The pertinent facts with respect to American's application are set forth in its amended complaint, which facts the Trustee (for purposes of this motion) has conceded are true. It is the Trustee's position that in no event is American entitled to the insurance proceeds.

4. In addition to those facts which are set forth in American's amended complaint, the court should also be advised of the following:

a) In January of 1970 American entered into an agreement with Baroff pursuant to which it agreed to clear Baroff's sales and purchases of securities and to loan and advance to Baroff varying sums of money in connection with the operation of its business.

b) In connection with the foregoing arrangement, Baroff executed a Collateral Loan & Security Agreement ("Security Agreement") in favor of American, a copy of which is annexed to American's Proof of Claim. (See Exhibit A to the amended complaint).

c) Pursuant to the terms and provisions of the Security Agreement, Baroff delivered negotiable securities, duly endorsed for transfer, as collateral for its liabilities and indebtedness as defined in the agreement.

d) At the time Baroff was placed in liquidation, American had in its possession certain negotiable securities which had been placed and delivered to it by Baroff as collateral security for its indebtedness.

e) On or about January 27, 1972, American entered into an agreement with the Trustee (hereafter "Sales Agreement") allowing American to sell the securities and to deposit the net proceeds of sale into escrow with the Irving Trust Company, 1 Wall Street, New York, New York. American, the Trustee and the Irving Trust Company also entered into an escrow agreement pursuant to which the net proceeds of the sale of the securities were to be held by the Irving Trust Company.

The Sales Agreement provided as follows:

> This Agreement is without prejudice to the rights and causes of action which either of the parties hereto may have or might have in the absence of this Agreement, which are retained and preserved with the same force and effect * * *.

f) Thereafter, the securities were sold and the proceeds of sale were placed in escrow in accordance with the terms of the above agreements.

g) Subsequently, American applied to this court for an order directing that its claims for unpaid loans and advances, interest thereon and attorneys fees be paid from the escrow funds. In addition, American also requested that the balance of the escrow funds remaining after said payments continue to remain in escrow to be applied towards any liability or damages American might incur as a result of the claim of Esther I. Corey, set forth in detail in paragraphs 9 through 19 of the amended complaint herein.

5. The Trustee initially opposed American's application in its entirety. Subsequently, the Trustee agreed to the payment of American's claims for unpaid loans and advances and attorneys fees. However, the Trustee would only consent to paying interest to American from the profits which were realized from investment of the escrow funds. The Trustee claimed that American was not entitled

to receive the balance of its interest from the proceeds of sale of its collateral. Additionally, the Trustee opposed any portion of the escrow funds being utilized to satisfy the Corey claim upon the grounds that it was neither covered by the Security Agreement nor allowable under the Bankruptcy Act.

6. Argument on American's application with respect to the interest claim and the Corey claim was heard by this court in June, 1973.

7. Subsequently, upon American's payment to Esther I. Corey of $180,449.58 as set forth in the amended complaint, the Trustee instructed the escrow agent to pay the balance of the escrow funds to American. This is the payment of $79,321.62 referred to by Mr. Ferguson in his affidavit. Of this sum, $5,208.75 consists of unpaid interest.

8. Thus, American still has a claim in excess of $100,000. Although the Trustee opposed any allowance of the Corey claim, he has since reversed his position and in his Memorandum of Law filed in connection with this motion, he states in a footnote on page 7:

The Trustee does not oppose the allowance of the Bank's excess claim as that of an unsecured general creditor.

9. By virtue of the foregoing, American is entitled to summary judgment in its favor directing that the Trustee pay to it all the insurance proceeds he received under the bond issued by the Insurance Company of North America in connection with the claim of Esther I. Corey.

ROBERT MIGATZ

Sworn to before me this
13th day of December, 1974.

JERRY KOWALSKI
Notary Public, State of New York
No. 24-7347675
Qualified in Kings County
Commission Expires March 30, 197...

Plaintiff American Bank & Trust Company

Notice of Motion for Summary Judgment

DOCKETED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter	
-of-	72 Civ. 60
F. O. BAROFF CO., INC.,	
Debtor.	
AMERICAN BANK & TRUST COMPANY,	
Plaintiff,	
-against-	
EDWARD S. DAVIS, Trustee for the Liquidation of the Business of F.O. BAROFF CO., INC.,	
Defendant.	

SIRS:

PLEASE TAKE NOTICE that upon the pleadings filed herein, the Memorandum of Law submitted on behalf of American Bank & Trust Company (the "plaintiff"), and the affidavit of Robert Migatz, sworn to December 13, 1974, the plaintiff will move this court in Room 238, United States Courthouse, Foley Square, New York, New York

on January 10, 1975 at 2:15 p.m. of that day for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure on the ground that there is no genuine issue as to any material fact and that the plaintiff is entitled to judgment as a matter of law, and for such other, further and different relief as to the court may seem just and proper.

DATED: New York, New York
January 9, 1975

REAVIS & MCGRATH

By _____
Stephen R. Steinberg
A Member of the Firm
Attorneys for Plaintiff, American
Bank & Trust Company
1 Chase Manhattan Plaza
New York, New York 10005

TO: HUGHES, HUBBARD & REED
Attorneys for Trustee
One Wall Street
New York, New York 10005

Supplemental Affidavit of James W. Giddens in Support of Defendant's Motion for Summary Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	
of	:	
F. O. BAROFF CO., INC.,	:	
Debtor.	:	72 Civ. 60
		SUPPLEMENTAL AFFIDAVIT
AMERICAN BANK & TRUST CO.,	:	
Plaintiff,	:	
- against -	:	
EDWARD S. DAVIS, Trustee for the Liquidation of the Business of F. O. BAROFF CO., INC.,	:	
Defendant.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JAMES W. GIDDENS, being duly sworn, deposes and says that:

1. I am a member of the firm of Hughes Hubbard & Reed, attorneys for the Trustee for the liquidation of F. O. Baroff Co., Inc. and I am fully familiar with the facts hereinafter stated.

2. This Affidavit is submitted to supplement the affidavit of J. Bruce Ferguson, dated October 25, 1974, in support of the motion by defendant Edward S. Davis, Trustee (the "Trustee") for summary judgment pursuant to Fed. R. Civ. Proc. 56 on the grounds that (a) there is no genuine issue as to any material fact and (b) the Trustee is entitled to judgment as a matter of law.

3. For the purposes of this action, the facts are as stated in the Bank's complaint dated June 17, 1974, as amended on October 7, 1974, with the exception of paragraph 20; and in addition

4. On November 10, 1971 Esther Corey asserted a claim against the Debtor for her losses arising from the sale of stocks which had been stolen. [See Exhibit 1]. The Debtor negotiated with Corey to resolve the claim but no final settlement was reached prior to the commencement of the liquidation of the Debtor.

5. The Debtor, as a nonmember, was required to clear transactions on the New York Stock Exchange through member brokers. Consequently 340 shares of Mesta Machine Co. belonging to Esther Corey were sold on behalf of the Debtor by Loeb Rhoades & Co. [See Exhibit 2].

6. The Debtor notified the Insurance Company of North America ("INA") of the Corey claims by letter dated December 8, 1971 and made an initial claim of $14,369.41. [See Exhibits 2 and 3]. The Debtor had paid premiums to INA on its policy which remained in full force and effect on January 6, 1972.

Dated: New York, New York
January 30, 1975

James W. Giddens
James W. Giddens

Sworn to before me this
30th day of January, 1975

Notary Public

[illegible]
State of [illegible] No. 41-[illegible]
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 19[illegible]

Exhibit 1

(Letter dated December 1, 1971 from Herbert G. Labbi, to Leonard R. Glass, Esq)

Annexed to Supplemental Affidavit of James W. Giddens

HERBERT G. LABBIE
ATTORNEY AT LAW
605 MANOR BUILDING
564 FORBES AVENUE
PITTSBURGH, PENNSYLVANIA 15219
391-3560

December 1, 1971

Leonard Glass, Esquire
Glass and Greenberg
540 Madison Avenue
New York, N. Y. 10022

Dear Mr. Glass:

As stated in my letter of November 10, 1971, my client, Esther I. Corey, demands the immediate return of all of her stocks sold through your client, F. O. Baroff Company, Inc., as well as any dividends lost by her as a result of the sales.

I am enclosing additional notarized Affidavits of Forgery signed by Esther I. Corey in regard to the following companies and certificates:

Name of Company	Certificate Number	Number of Shares	
S. S. Kresge Company	C 187172	100	
		total	100
Mesta Machine Company	P 13237	100	
	P 13239	100	
	PO 14674	40	
		total	240
Mobil Oil Corporation	K 19094	100	
	K 19095	100	
	K 19096	100	
	K 19097	100	
	K 19098	100	
	NY H 106072	100	
	NY F 452784	62	
		total	662

EXHIBIT 1

Name of Company	Certificate Number	Number of Shares	
National Steel Corporation	NH 75116	100	
		total	100
Philadelphia Electric Company	CO 353187	8	
	CO 392749	1	
	NY C 117282	100	
	NY CO 173230	58	
		total	167
The Pillsbury Company	NC 10006	100	
		total	100

I am attaching two schedules. The first shows the number of shares of each stock of Esther I. Corey that was sold by F. O. Baroff Co., Inc.; and the second shows the dividends and record date, transfer date, and the dividends lost since the transfer date. The total dividends lost since the transfer date is $4,681.04

Once again, in order to expedite the processing of this matter, I am sending duplicate originals of these Affidavits and schedules to Insurance Company of North America, attention John Mangan, in Philadelphia, Pa.

Your prompt attention to this matter will be greatly appreciated.

Very truly yours,

Herbert G. Labbie

HGL/gt

Enclosures

CC: INA
Attn: Mr. John Mangan

Exhibit 2

(Letter dated December 21, 1971 from Leonard R. Glass to John J. Mangan, Supervision Bonding Claims etc.,)

Annexed to Supplemental Affidavit of James W. Giddens

GLASS & GREENBERG
COUNSELORS AT LAW

LEONARD R. GLASS
HAROLD GREENBERG
STEPHEN IRWIN
LORANCE HOCKERT
RONALD S. BIANCHI
ROBERT BERENGARTEN

640 MADISON AVENUE
NEW YORK, N.Y. 10022
TEMPLETON 8-6670

December 21, 1971

John J. Mangan, Supervisor
Bonding Claims
Insurance Company of North America
625 Walnut Street
P. O. Box 1616
Philadelphia, Pa. 19105

COPY

Re: Insured: F. O. Baroff Company, Inc.
Claimant: Esther I. Corey
Your File No. 99[illegible]61[illegible]705

Dear Mr. Mangan:

On behalf of F. O. Baroff Company, Inc., I submit herewith a request for indemnification as follows:

$9,240.87 paid to Loeb, Rhoades & Co. for 340 shares of Mesta Machines	$ 9,240.87
$5,128.54 paid to Esther I. Corey for accrued dividends due to Mrs. Corey as of December 15, 1971	5,128.54
Total.....	$14,369.41

Supporting documents are enclosed herewith.

Very truly yours,

LRG:EF
ENC.

C.C. F. O. Baroff Company, Inc.

EXHIBIT 2

Exhibit 3

(Letter dated December 8, 1971 from Leonard R. Glass, to John J. Magan, Bonding Claims, etc

Annexed to Supplemental Affidavit of James W. Giddens

GLASS & GREENBERG
COUNSELORS AT LAW

LEONARD A. GLASS
HAROLD GREENBERG
STEPHEN IRWIN
LORRANCE HOCKERT
RONALD S. BIANCHI
ROBERT SCRENGARTEN
RICHARD A. FREEMAN

540 MADISON AVENUE
NEW YORK, N. Y. 10022
TEMPLETON 8-6670

December 8, 1971

Mr. John J. Mangan
Supervisor
Bonding Claims
Insurance Company of North America
625 Walnut Street
P. O. Box 1616
Philadelphia, Pennsylvania 19105

Re: Insured - F. O. Baroff Company, Inc.
Claimant - Mrs. Esther I. Corey
Your File Number 990B 610705

Dear Mr. Mangan:

We enclose herewith the following: (1) Memorandum of F. O. Baroff Company, Inc. setting forth a brief resume of the facts giving rise to the claim and the transactions comprising the claim; (2) Confirmations, cancelled checks and order tickets issued or prepared in connection with the transactions; (3) Under separate cover claimant has forwarded to you affidavits of the forgery and photostatic copies of the certificates of common stock.

Under letter dated October 26, 1971, you advised the undersigned that Insurance Company of North America was taking the position that the coverage under the policies was limited to a maximum liability of $100,000 and a $5,000 deductible provision. We assume that this limitation of coverage was based upon the premise that all of the transactions involved in the claim constituted a single transaction.

Please be advised that the insured, F. O. Baroff Company, Inc., disagrees with this position and it is the position of F. O. Baroff Company, Inc. that each sale of securities herein constituted a separate transaction for which maximum coverage less the deductible provision should be provided. This position is supported by construction of the policies themselves, industry practice and supporting rulings. It is the intention of our client to insist upon payment of the full coverage provided for under the insurance contracts with Insurance Company of North America.

EXHIBIT 3

We would appreciate your immediate response after reviewing the enclosures.

Very truly yours,

Leonard R. Glass

LRG/sjm

Enclosure

CC: F. O. Baroff Company, Inc.
15 Maiden Lane
New York, New York

Order of Hon. Edward J. Ryan, Bankruptcy Judge,
Granting Defendant's Motion for Summary Judgment,
and Denying Plaintiff's Motion for Summary Judgment

Rem D.B.E. D Brieff

DOCKETED X

228a

(20)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	
-of-	:	
F. O. BAROFF CO., INC.,	:	72 Civ. 60
Debtor.	:	
		ORDER
AMERICAN BANK & TRUST COMPANY,	:	
Plaintiff,	:	
-against-	:	
EDWARD S. DAVIS, Trustee for the Liquidation of the Business of F. O. BAROFF CO., INC.,	:	
Defendant.	:	

FILED

JUN 20 1975

EDWARD J. RYAN
BANKRUPTCY JUDGE

ORDER WITH RESPECT TO THE COMPLAINT OF AMERICAN BANK AND TRUST CO.

Upon the Complaint of plaintiff American Bank & Trust Co. (the "Bank") dated June 17, 1974, as amended on October 7, 1974, the Notice of Motion for Summary Judgment of defendant Edward S. Davis, Trustee (the "Trustee") dated October 25, 1974, the Trustee's Memorandum of Law dated October 25, 1974 and the accompanying Affidavit of J. Bruce Ferguson dated October 25, 1974, and the Supplemental Affidavit of James W. Giddens, dated January 30, 1975, submitted in support of the Trustee's motion for summary judgment, the Bank's Memorandum of Law dated December 13, 1974, and the accompanying Affidavit of Robert Migatz dated December 13, 1974 submitted in support of the Bank's motion for summary judgment, and upon oral argument had before

me after due notice to all parties to this proceeding, and sufficient cause appearing to me therefor based upon this Court's Findings of Fact and Conclusions of Law, it is hereby

ORDERED, that the Trustee's motion for summary judgment is granted in all respects; and it is further

ORDERED, that the Debtor is entitled to retain the amount of $93,691.03 out of the $100,000.00 in proceeds received by the Trustee; and it is further

ORDERED, that the Bank is entitled to receive the remaining proceeds amounting to $6,308.97.

Dated: New York, New York
June 20, 1975

Edward J. Ryan
Bankruptcy Judge

Findings of Facts Conclusions of Law

of Hon. Edward J. Ryan, Bankruptcy Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter	
-of-	
F. O. BAROFF CO., INC.,	
Debtor.	72 Civ. 60
AMERICAN BANK & TRUST COMPANY,	FINDINGS OF FACT
Plaintiff,	
-against-	
EDWARD S. DAVIS, Trustee for the Liquidation of the Business of F. O. BAROFF CO., INC.,	
Defendant.	

FINDINGS OF FACT WITH RESPECT TO THE COMPLAINT OF AMERICAN BANK AND TRUST CO.

1. In January 1970 the Debtor entered into a typical broker's loan agreement with the Bank and executed a Collateral Loan & Security Agreement ("Security Agreement") in favor of the Bank which provided that the Debtor would deliver negotiable securities, duly endorsed for transfer, as collateral for its liabilities and indebtedness to the Bank under the Security Agreement.

2. In April 1971 certain securities owned by one Esther Corey and registered in her name were stolen from her. The securities were endorsed for transfer by the forgery of Corey's signature. Certain of the securities were sold through the Chicago office of the Debtor. The Debtor guaranteed the forged endorsement and the Bank, under its agreement to clear

securities transactions for the Debtor, subsequently affixed its "signature guaranteed" stamp on the stolen securities which would permit transfer and re-registration of the securities in the names of the purchasers.

3. Subsequently on November 10, 1971, Corey asserted a claim against the Debtor for her losses. The Debtor entered into negotiations with Corey to resolve the claim but concluded no final settlement prior to the commencement of the liquidation. The Debtor did agree to pay and paid Corey $5,128.54 in December 1971 representing accrued dividends on the stolen securities sold through the Debtor.

4. Since the Debtor was not a member of the New York Stock Exchange it was required to clear transactions for its customers on such Exchange through brokers who were members. Certain of the Corey securities, in particular 340 shares of Mesta Machines Co., were sold on behalf of the Debtor by Loeb Rhoades & Co. Loeb Rhodes & Co. agreed to return the shares to Corey and claimed and received from the Debtor $9,240.87 to cover the re-delivery of the shares. Thus, during December 1971 the Debtor paid $14,369.41, directly or indirectly, to Corey on her claim.

5. The Debtor, as required of members of the National Association of Securities Dealers, Inc., on July 9, 1970 obtained an insurance policy with Insurance Company of North America ("INA") providing coverage for claims on account of loss of securities and dishonesty of employees. The policy is generally referred to as a "Broker Blanket Bond." The Debtor paid premiums on the policy which remained in full force and effect on January 6, 1972, the date of the commencement

of the Debtor's liquidation under the Securities Investor Protection Act of 1970.

6. The Debtor gave notice of the Corey claims to INA by letter dated December 8, 1971 and made an initial claim of $14,369.41 to INA.

7. On January 6, 1972 the Debtor was placed in liquidation. On that date the Bank held certain securities pledged by the Debtor as collateral pursuant to the Security Agreement.

8. On January 27, 1972 the Bank entered into an agreement with the Trustee (the "Sales Agreement") permitting the Bank to sell the securities held as collateral under the Security Agreement and place the net proceeds into escrow with the Irving Trust Company, as escrow agent, pending determination of the rights of the respective parties to the proceeds. Subsequently these terms of the Sales Agreement were duly executed and $205,318.24 was placed in escrow.

9. Subsequently, the Bank applied to this Court (the "Application") for an order directing that its claim for unpaid loans and advances, interest thereon and attorneys' fees be paid from the escrow funds. After investigation the Trustee acquiesced to the Bank's entitlement to be paid from the escrow its underlying indebtedness in the amount of $107,021.32 plus 52.124% of the profits earned on such amount, $15,000.00 on another matter entitled the "Gottlieb Claim," and legal fees incurred by its counsel in the amount of $16,083.81.*

---

* These payments amounted to some $138,000. The Bank also received $79,321.62 from the escrow fund as payment on the "Corey" claim, ¶¶ 10 and 11 infra. In sum, the Bank, as a secured creditor, has been paid approximately $217,000 of its allowed claims against the estate of $318,000.

10. In the Application the Bank contended that the "dragnet" clause of the Security Agreement covered the contingent claim which the Bank had against the Debtor as a result of the Bank's potential liability to Esther Corey.* The Trustee initially objected that the contingent claim was not secured by the Security agreement.

11. However, upon the payment of $180,449.58 by the Bank to Corey in full settlement of her claim against it, the Trustee agreed that, since the liability was no longer "contingent" the Bank was entitled to the remainder of the escrow fund, $79,321.62, and the Bank was paid that amount.

12. The Debtor's total loss through payments to third parties with respect to Esther Corey, i.e., to Corey, to Loeb Rhoades & Co. and to the Bank, amounts to $93,691.03.

13. Having filed a claim for $14,369.41 in December 1971 (¶ 6, supra), on July 10 and September 18, 1974 the Trustee filed an amended claim with the Debtor's insurer for $100,000** pursuant to the Insurance Policy and subsequently received that amount and added it to the Debtor's General Estate.

14. On June 17, 1974 the Bank filed the instant complaint asserting, in effect, a right to the $100,000 proceeds of the Insurance Policy as compensation for the Bank's outstanding loss of $101,127.96 on the Corey claim.

---

* The Bank therefore asserted that the Debtor would be liable to the Bank if the Bank made payment with respect to its potential liability to Esther Corey.

** The maximum coverage under the Insurance Policy.

The Trustee has not objected to the Bank's being paid $6,308.37 from the $100,000 after reimbursement to the Debtor of its $93,691.03 loss on the Corey claim.

Dated: New York, New York
June 20, 1975

Edward J. Ryan
Bankruptcy Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	
of	:	
F. O. BAROFF CO., INC.,	:	
Debtor.	:	72 Civ. 60
	x	CONCLUSIONS OF LAW
AMERICAN BANK & TRUST COMPANY,	:	
Plaintiff,	:	
-against-	:	
EDWARD S. DAVIS, Trustee for the Liquidation of the Business of F. O. BAROFF CO., INC.,	:	
Defendant.	:	
	x	

CONCLUSIONS OF LAW WITH RESPECT TO THE COMPLAINT OF AMERICAN BANK AND TRUST CO.

1. The determination of the rights of the parties herein to the $100,000.00 in insurance proceeds received by the Trustee, is a matter committed to my discretion to hear and determine under the Order of Referral of the Hon. Lawrence W. Pierce dated January 20, 1972.

2. Section 167(1) of the New York Insurance Law (McKinney 1966)* provides (1) that the insured's insolvency or bankruptcy does not release the insurer from its liability under

---

* Section 167 provides, in pertinent part, as follows:

> "No policy or contract insuring against liabiliy for injury to person * * * or against liability for injury to or destruction of, property shall be issued or delivered in this state, unless it contains in substance the following provisions * * * :
>
> "(a) A provision that the insolvency or bankruptcy of the person insured, or the

(continued on next page)

the policy, § 167(1)(a), and (2) that a third-party with a judgment against the insured unsatisfied after thirty days may proceed directly against the insured, § 167(1)(b). Section 167(1) is applicable to indemnity policies under certain circumstances. Coleman v. New Amsterdam Casualty Co., 247 N.Y. 271, 160 N.E. 367 (1928); Skenandoa Rayon Corp. v. Halifax Fire Ins. Co., 245 App. Div. 279, 281 N.Y.S. 193, aff'd, 272 N.Y. 457, 3 N.E.2d 867 (1935).

3. Section 167(1) of the New York Insurance Law is a remedial provision rectifying a prevelant inequity worked by a common law rule which effectively released an indemnity insurer when the insured became insolvent because the policy was regarded as one of indemnity against loss, and it was thought that there could be no loss to a bankrupt debtor who was unable to pay the injured third-party. See Coleman v. New Amsterdam Casualty Co., 247 N.Y. 271, 275 (1928) (Cardozo, C.J.); Comment, An Overlooked String on a Plaintiff's Bow: New York Insurance Law Section 167 (1), 44 Cornell L.Q. 396, 397 & n.6 (1959). Thus the terms

(continued from preceding page)

> insolvency of his estate, shall not release the insurer from the payment of damages for injury sustained or loss occasioned during the life of and within the coverage of such policy or contract.
>
> "(b) A provision that in case judgment against the insured or his personal representative in an action brought to recover damages for injury sustained or loss or damages occasioned during the life of the policy or contract, shall remain unsatisfied at the expiration of thirty days from the serving of notice of entry of judgment upon the attorney for the insured, or upon the insured, and upon the insurer, then an action may, except during a stay or limited stay of execution against the insured on such judgment, be maintained against the insurer under the terms of the policy or contract for the amount of such judgment not exceeding the amount of the applicable limit of coverage under such policy or contract."

of § 167(1) are available to a third-party only when the insured is foreclosed from benefiting from its contract by reason of bankruptcy. If this purpose is to be given operative effect, as it must, then where the insured is able to derive the benefit of its contract, as the Debtor has here, the statute is inapplicable.

4. It is clear that the remedial purpose and the explicit language of § 167(1)(a) were designed to prevent insurers from abrogating their contracts with debtors in bankruptcy who had yet to suffer a loss. But it is equally clear that this provision does not purport to affect the vested rights of a debtor who, as the Debtor here, has sustained an actual loss, and is entitled to indemnity from the insurer who has accepted the premiums and guaranteed reimbursement.

5. The insurer's obligation under the Broker's Blanket Bond involved here, which was a typical indemnity policy insuring against losses arising from the lack of integrity, fidelity or honesty of employees, ran solely to the insured, the Debtor. See American Empire Ins. Co. v. Fidelity & Deposit Co., 408 F.2d 72 (5th Cir. 1969). Under such indemnity policies the insurer's liability attaches only when the insured sustains an actual loss by virtue of payment to an injured third-party. See Harris v. Standard Accident & Ins. Co., 297 F.2d 627 (2d Cir. 1961), cert. denied, 369 U.S. 843 (1962); Ronnau v. Caravan International Corp., 205 Kan. 154, 468 P.2d 118 (1970).

6. The direct action provisions of § 167(1)(b) admit of no other interpretation than that which accords with the terms of subdivision a. Therefore, a third-party would be entitled to receive the entire proceeds where the insured has suffered no loss. However, subsection b does not provide that the third-party has a right to the full satisfaction of its claim before

the insured is entitled to reimbursement, but it merely insures that third-party claims receive satisfaction to the limits of the policy.

7. The Bank's contention that despite sustaining a loss the Debtor is not entitled to the insurance proceeds is unsupported by authority. When properly viewed in their factual contexts, the two cases primarily relied upon by the Bank are inapposite.

8. In Merchants Mutual Automobile Liability Ins. Co. v. Smart, 267 U.S. 126 (1925) an insurance company, not the insured, was opposing a personal injury claim by a third-party. The Court held that under the predecessor provision to § 167(1) the third-party could collect from the insurer because "the clause [became] operative only in the event of insolvency or bankruptcy of the assured when he can no longer use the indemnity to pay the injured person as he should." (Emphasis added.) 267 U.S. at 131. That holding comports with our construction of the statute in the instant case. There the insured had sustained no loss and had made no payment to the third-party and consequently the statute was properly invoked. Here the Debtor has made payments and has suffered losses and thus there is no basis upon which the Bank may invoke the statute.

9. The decision in In re Fay Stocking, 95 F.2d 961 (6th Cir. 1938) is also in accord with our construction of the statute. That too was a personal injury claim based on a liability insurance policy. The bankruptcy trustee there did not challenge the right of the injured third-party to the insurance proceeds because the debtor had made no payment to the claimant and had suffered no loss. Indeed, there the trustee simply sought to have the injured party's related claim filed

in the bankruptcy proceeding reduced by the amount of the insurance recovery.

10. Both of the cases are entirely consistent with the interpretation of the statute construing its provisions to apply to cases in which the debtor has not sustained a loss. Such is not the case here. The statute clearly was not intended to deprive the insured of the benefit of its insurance contract.

11. Accordingly, the Trustee's motion for summary judgment is granted in all respects.

Dated: New York, New York
June 20, 1975

Edward J. Ryan
Bankruptcy Judge

Notice of Appeal from the Order of
Hon. Edward S. Ryan, Bankruptcy Judge
Granting Defendant's Motion for Summary
Judgment and Denying Plaintiff's Motion
for Summary Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	
-of-	:	72 Civ. 60
F. O. BAROFF CO., INC.,	:	
Debtor.	:	
		NOTICE OF APPEAL
AMERICAN BANK & TRUST COMPANY,	:	
Plaintiff,	:	
-against-	:	
EDWARD S. DAVIS, Trustee for the Liquidation of the Business of F. O. BAROFF CO., INC.,	:	
Defendant.	:	

SIRS:

American Bank & Trust Company, plaintiff, appeals to the district court from the order of the Honorable Edward S. Ryan, Bankruptcy Judge, entered in this case on June 20, 1975 which granted defendant's motion for summary judgment and denied plaintiff's motion for summary judgment.

The parties to the order appealed from and the names and addresses of their respective attorneys are as follows:

Securities Investor Protection
Corporation
Suite 800, Farragut Building
900 Seventeenth Street, N.W.
Washington, D. C. 20006

Securities & Exchange Commission
26 Federal Plaza
New York, New York

Hughes, Hubbard & Reed
Attorneys for Edward S. Davis,
Trustee
1 Wall Street
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DATED: New York, New York
June 26, 1975

REAVIS & McGRATH

By s/
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DCB

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	
of	:	
F.O. BAROFF COMPANY, INC.,	:	
Debtor.	:	72 Civ. 60
AMERICAN BANK & TRUST COMPANY,	:	
Plaintiff-Appellant,	:	
- v -	:	
EDWARD S. DAVIS, Trustee,	:	
Defendant-Appellee.	:	

APPEARANCES:

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Attorneys for Plaintiff-Appellant

Decision and Order of

Lawrence W. Pierce, U.S.D.J.

Appealed from

LAWRENCE W. PIERCE, D.J.

MEMORANDUM OPINION

This action arises in the context of the liquidation of the business of F.O. Baroff Company, Inc. (the Debtor or the Insured) pursuant to the provisions of the Securities Investor Protection Act (SIPA), 15 U.S.C. §§78aaa-78111. The instant dispute, which represents the last substantive matter open in this liquidation proceeding, is an appeal from the ruling of the Hon. Edward J. Ryan, Bankruptcy Judge and Special Master for this liquidation, granting the Trustee's motion for summary judgment with respect to the claim of American Bank & Trust Co. (American) for recovery of certain proceeds of an indemnity insurance policy of the Debtor, paid to the Debtor by the Insurance Company of North America (INA or the Insurer). The Special Master held that American was not entitled to the insurance proceeds recovered by the Trustee for the General Estate of the Debtor, except for that portion as to which American's application was unopposed. American's cross motion for summary judgment was denied.

The sole issue presented on this appeal concerns the application of the provisions of Section 167 of the

Insurance Law of the State of New York to the facts of this case. For the reasons stated below, the Court affirms the Order of the Bankruptcy Judge.

The Facts

The facts which are relevant to this appeal as found by the Court below are not in dispute and may be stated briefly. F.O. Baroff and Company, Inc. was engaged in business as a securities broker-dealer prior to being placed in liquidation by order of this Court dated January 6, 1972. As a member of the National Association of Securities Dealers, Inc. the Debtor was required to obtain and on July 9, 1970 did obtain an insurance policy known as a "Broker Blanket Bond". This policy, issued by INA, provided coverage, inter alia, for claims arising from loss sustained through dishonest and fraudulent acts of the Debtor's employees. The Debtor paid premiums on the policy and it was in full force and effect on January 6, 1972, the date of the commencement of the instant liquidation.

In January, 1970, the Debtor entered into a Collateral Loan and Security Agreement (Security Agreement) which provided that in connection with the rendering of certain services to the Debtor by American, the Debtor would deliver negotiable securities as collateral for liabilities

and indebtedness to American arising under the Security Agreement. American held securities pledged by the Debtor pursuant to this Security Agreement at the time the Debtor was placed in liquidation. These securities were subsequently sold by American and the proceeds were placed in an escrow fund pending a determination of the rights of the respective parties to the proceeds of the sale.

In April, 1971, securities owned by one Esther Corey (Corey), a customer of the Debtor, were stolen from her and were sold through an office of the Debtor by means of a forged endorsement. The Debtor guaranteed the forged endorsement and the Bank, pursuant to its agreement to clear securities transactions for the Debtor, also guaranteed the signature.

Subsequently, in November, 1971, Corey brought an action against the Debtor for recovery of her losses. It is not disputed that this claim was within the terms of the INA insurance policy held by the Debtor.

In the course of negotiating with Corey concerning her claim, the Debtor agreed to pay and did pay to Corey $5,128.54 representing accrued dividends on the stolen securities. In connection with the Corey claim, the Debtor also paid to Loeb Rhodes & Co., a member of the New York

Stock Exchange which had effected the sale of certain of the stolen securities on the New York Stock Exchange and which agreed to return the shares to Corey, the sum of $9,240.87 to cover the redelivery of the shares to Corey. Thus, prior to commencement of the liquidation proceeding, the Debtor paid a total of $14,369.41, directly or indirectly, in partial satisfaction of the Corey claim.

After the commencement of the instant liquidation proceeding, American applied to the Court for an order directing that certain claims which it had against the Debtor for unpaid loans and advances, interest thereon, and attorneys' fees be paid to American from the escrow fund; and, such payments, not at issue here, were made to American, leaving a balance of $79,321.62 in the escrow fund. American also contended that the "dragnet" clause of the Security Agreement with the Debtor covered certain contingent claims including the Corey claim. This position was initially disputed by the Trustee, but the issue of whether contingent claims were covered by the Security Agreement was mooted when American paid $180,449.58 to Corey in full settlement of her claim. Thereafter, the Trustee acquiesced in the payment to American of the $79,321.62 remaining in the escrow fund as partial reimbursement for American's liability to Corey.

Having previously filed a claim with INA for $14,369.41 in connection with losses incurred with respect to the Corey claim, the Trustee filed an amended claim on July 10 and September 18, 1974 for $100,000, the limit of the Debtor's policy. This amount was received and added to the Debtor's General Estate.

In June, 1974, American filed the instant complaint asserting a right to the $100,000 proceeds of the insurance policy as compensation for American's loss of $101,127.96 on the Corey claim. The Trustee did not object to American's being paid $6,308.97 from the $100,000, representing the balance remaining after reimbursement to the Debtor of the $93,691.03 total paid by it with respect to the Corey claim. American's application was denied insofar as it sought recovery beyond the unopposed amount by the Opinion and Order of the Bankruptcy Judge dated June 20, 1975.

Discussion

The question presented on this appeal is whether, under the circumstances of this case as set forth supra, Section 167 entitles American to recover the insurance proceeds paid to the Debtor by INA. The pertinent portions of the statute provide that (a) an insurer shall not be

released from its liability under a policy of insurance solely by reason of the bankruptcy of the insured, and (b) that an injured third party, with a judgment against the insured remaining unsatisfied after 30 days, may bring an action directly against the insurer.[1/]

This statute was enacted as a remedial provision to correct the inequitable situation which arose under the common law rule which discharged an insurer from liability upon the bankruptcy of the insured on the theory that under such circumstances the insured, being unable to pay the injured third party, would suffer no loss. See Coleman v. New Amsterdam Casualty Co., 247 N.Y. 271, 275, 160 N.E. 367 (1928). Thus, the purpose of the statute was to protect injured plaintiffs or third parties. Larkin v. Munson S.S. Line, 100 F.2d 393, 394 (2d Cir. 1938); Jackson v. Citizens Casualty Co., 277 N.Y. 385, 390, 14 N.E. 2d 446, 448 (1938). The statute has been found applicable to indemnity as well as to liability policies. See Coleman v. New Amsterdam Casualty Co., supra; Skenandoa Rayon Corp. v. Halifax Fire Ins. Co., 245 App. Div. 279, 281 N.Y.S. 193 (4th Dept.), aff'd, 272 N.Y. 457, 3 N.E.2d 867 (1935).

In pressing their respective positions as to the applicability of this statute to the facts of this case, the

parties rely on seemingly conflicting language contained within one Supreme Court opinion, Merchants Liability Co. v. Smart, 267 U.S. 126 (1925). That case interpreted Section 109 of the Insurance Laws of New York, the predecessor statute of the provision under consideration here.

The Trustee relies on the Court's statement that the clause which secures to the injured person the indenmity which the insured has provided for himself "becomes operative only in the event of the insolvency or bankruptcy of the assured when he can no longer use the indemnity to pay the injured person as he should." Id. at 131. Further, the Trustee argues, there is no indication in the statute or case law interpreting it to mean that the legislature intended by the enactment of this statute to interfere with the contractual relation between the insurer and the insured.

American, on the other hand, relies on the language immediately following that just quoted where the Court stated:

> "The title to the indemnity passes out of the bankrupt or insolvent person and vests in him in whom the contract and the state law declare it should vest. The assured is divested by the terms of the instrument under which the interest of the assured and the interest of the injured, then contingent, and now absolute,

> were created. The general creditors have lost nothing because by the fact of bankruptcy the interest of the assured in the policy passed to the injured person and did not become assets of the assured." Id.

American argues that the result sought by the Trustee would create an unjust distinction between injured third parties with a security interest in some asset of the insured and those without such an interest. Further, American argues, since in this case the collateral released to American by the Trustee was held by American pursuant to a security agreement, American always had a right to use it to reduce the amount of its claims against the Debtor's estate. See United States National Bank v. Chase National Bank, 331 U.S. 28, 33-34 (1947); In re Pennyrich International Inc. of Dallas, 473 F.2d 417, 421 (5th Cir. 1973). Therefore, since the collateral passed to American by virtue of an interest which was superior to that of the Trustee, the transfer cannot be characterized as a "loss" to the General Estate.

With respect to this last point, the Court cannot agree with American's position. Had American elected not to exercise its security interest, an option which was certainly available, see United States National

Bank v. Chase National Bank, supra; In re Pennyrich International, Inc. of Dallas, supra, the funds available to the General Estate would have been increased. It is this Court's view that American's exercise of its security interest effected a reduction in the funds available to the General Estate and, consequently, resulted in a "loss" to the General Estate. The question of the effect of Section 167 where the insured has suffered a loss by virtue of payments to injured third parties must therefore be addressed.

Unlike a policy of liability insurance, an insurer's obligation to pay an indemnity policy usually arises only when the insured sustains a loss by reason of payment to an injured third party. See Harris v. Standard Accident & Ins. Co., 297 F.2d 627, 635 (2d Cir. 1961), cert. denied, 369 U.S. 843 (1962). Unless altered by statute, the insurer's obligation, even then, runs only to the insured. See American Empire Ins. Co. of S.D. v. Fidelity & Deposit Co. of Md., 408 F.2d 72 (5th Cir.), cert. denied, 396 U.S. 818 (1969).

Section 167 does alter this principle when, by reason of bankruptcy, the insured is unable to satisfy a judgment in favor of an injured third party and will

suffer no loss as a result of payments to such a party. See Merchants Liability Co. v. Smart, supra; Coleman v. New Amsterdam Casualty Co., supra. Here, however, as already set forth, there has been a loss incurred by the insured. Further, by virtue of the Debtor's previous payments, injured third parties have already received at least partial satisfaction of their claims. Under these circumstances, where payment has been made and a loss has been suffered by the insured, and the insurer has indemnified the insured, the injured third party would have no direct right of action under Section 167 against the insurer for any sum beyond the difference between the indemnity paid and the limit of the policy. See Harris v. Standard Accident & Ins. Co., supra; Jackson v. Citizens Casualty Co., supra. Where, as here, the injured third parties have already had recovery up to the limits of the policy by virtue of the Debtor's payments and the order of the Court below, this Court can find no statutory language or policy which would be served by a holding that the injured third parties can have further recovery against the insured, simply because the insurer has now reimbursed the insured for the loss incurred by the insured. In other words, the Court agress with the Bankruptcy Judge

that the provisions of Section 167 are intended to assure only that injured third parties shall have their right to recover under insurance policies issued in the State of New York protected against the bankruptcy of the insured up to the limits of the policy.

Viewed in the factual context of the case itself, the language in Merchants Liability Co. v. Smart, supra, upon which American relies is not inconsistent with this result. In that case, where the insured had gone into bankruptcy and the insurer was resisting payment directly to an injured third party, there was no loss to the General Estate by virtue of the payment to the third party by the insurer because the insured had made no payment itself. Thus, because of the statutory provision, the title to the indemnity passed to the third party. Here, where the insured has made payments and suffered loss, the third parties have already received all the relief provided by the statute, that is, recovery up to the limit of the policy. For the same reasons, the language in In re Fay Stocking Co., 95 F.2d 961 (6th Cir. 1938) with respect to the vesting in the injured claimant of title to the proceeds of a liability insurance policy is inapplicable to the present case.

The order of the Court below is affirmed in all respects.

SO ORDERED.

Dated: March 25, 1976
New York, New York

LAWRENCE W. PIERCE
U. S. D. J.

FOOTNOTE

1/ Section 167 provides, in pertinent part, as follows:

"No policy or contract insuring against liability for injury to person . . . or against liability for injury to or destruction of, property shall be issued or delivered in this state, unless it contains in substance the following provisions . . .:

"(a) A provision that the insolvency or bankruptcy of the person insured, or the insolvency of his estate, shall not release the insurer from the payment of damages for injury sustained or loss occasioned during the life of and within the coverage of such policy or contract.

"(b) A provision that in case judgment against the insured or his personal representative in an action brought to recover damages for injury sustained or loss or damages occasioned during the life of the policy or contract, shall remain unsatisfied at the expiration of thirty days from the serving of notice of entry of judgment upon the attorney for the insured, or upon the insured, and upon the insurer, then an action may, except during a stay or limited stay of execution against the insured on such judgment, be maintained against the insurer under the terms of the policy or contract for the amount of such judgment not exceeding the amount of the applicable limit of coverage under such policy or contract."

Notice of Appeal from Order of

Hon. Lawrence W. Pierce, U.S.D.J.

Which Order Affimed the Order of Hon. Edward

J. Ryan, Bankruptcy Judge, Granting Defendant's

Motion for Summary Judgment dismissing

Complaint and Denying Plaintiff's Motion for

Summary Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	
of	:	
F. O. BAROFF COMPANY, INC.,	:	
Debtor.	:	72 Civ. 60
AMERICAN BANK & TRUST COMPANY,	:	NOTICE OF APPEAL
Plaintiff-Appellant,	:	
-against-	:	
EDWARD S. DAVIS, Trustee,	:	
Defendant-Appellee.	:	

SIRS:

PLEASE TAKE NOTICE that American Bank & Trust Company, the plaintiff-appellant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from each and every part of the Order of the United States District Court for the Southern District of New York (Hon. Lawrence W. Pierce, U.S.D.J.), dated March 25, 1976 and entered on March 26, 1976, which order affirmed the order of the Bankruptcy Court for said district (Hon. Edward J. Ryan, Bankruptcy Judge) dated and entered June 20, 1975 which

had granted defendant-respondent's motion for summary judgment dismissing the complaint herein and denied plaintiff-appellant's motion for summary judgment.

Dated: New York, New York
April 21, 1976

Yours, etc.

REAVIS & McGRATH

By _____

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SECURITIES & EXCHANGE COMMISSION
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STATE OF NEW YORK
CITY OF NEW YORK } ss.:
COUNTY OF NEW YORK

John J. Farrell, being duly sworn, deposes and says, that he is over 18 years of age. That on the 2nd day of July, 1976, he served 2 copies of the of the attached Appendix on ~~the attorney for~~ the Security Investors Products Corp. herein by depositing the same, properly enclosed in a securely sealed post-paid wrapper, in a U. S. Post Office at 90 Church Street, New York City, directed to said ~~attorney at~~ party as follows:

Security Investors Products Corp.
Suite 800
Farragut Building
900 - 17th Street N. W.
Washington D.C. 20006

the ~~r~~ being the place where they maintain ~~their~~ offices for the regular transaction of business, and the last address mentioned in the papers last served by them.

John J. Farrell

Sworn to before me this
2nd day of July, 1976.

Leon Greenbaum

LEON GREENBAUM
Notary Public, State of New York
No. 24-4616788 Qualified in Kings Co.
Cert. filed in New York County
Commission Expires March 30, 1977

Service of ~~three~~ Two (2) copies of the within
is admitted this 2nd day of July 1976

Attorneys for Defendant Appellee

SECURITIES & EXCHANGE COMMISSION
NEW YORK REGIONAL OFFICE
JUL 2 1976
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HUGHES HUBBARD & REED